

SENTAC



Delaware Sentencing Accountability Commission Benchbook 2012*

***INCLUDES RELEVANT LEGISLATION OF
THE 146th GENERAL ASSEMBLY**

SUMMARY OF PRESUMPTIVE SENTENCES

Crime Classification	Presumptive Sentence	Statutory	Page Ref.
Felonies			
Class A (Other than Murder)	15 yrs @ Level V	15 yrs. to Life	28
Class B	2 to 5 yrs (1st 2 yrs @ Level V)	2 to 25 yrs	31
Class C (Violent)	Up to 30 m @ Level V	up to 15 yrs	37
Class C (Nonviolent)	Up to 1 yr @ Level V	up to 15 yrs	41
Class D (Violent)	Up to 2 yrs @ Level V	up to 8 yrs	43
Class D (Nonviolent)	Up to 12 m @ Level II or III	up to 8 yrs	47
Class E (Violent)	Up to 15 m @ Level V	up to 5 yrs	49
Class E (Nonviolent)	Up to 12 m @ Level II	up to 5 yrs	53
Class F (Violent)	Up to 9 m @ Level V	up to 3 yrs	57
Class F (Nonviolent)	Up to 12 m for Title 11; Up to 18 m for Title 16 @ Level II	up to 3 yrs	60
Class G (Violent)	Up to 6 m @ Level V Title 16, §§4767,4768: 3-9 m @ Level V	up to 2 yrs	64
Class G (Nonviolent)	Up to 12 m @ Level II	up to 2 yrs	67
Misdemeanors			
Class A (Violent) MA1	Up to 12 m @ Level II	up to 1 yr	72
Class A (Escape) MA2	Up to 3 m @ Level IV	up to 1 yr	74
Class A (Property) MA3	Up to 12 m @ Level I	up to 1 yr	75
Class A (Order/Decency) MA4	Up to 12 m @ Level I	up to 1 yr	77
Class A (Controlled Substance)	16-4764: FOP Minimum 12 m @ Level I (7/12/05) 1st Offense 12m @ Level II	up to 1 yr	80
Class B	Fine, Costs & Restitution	up to 6 m.	81
Unclassified	Fine, Costs & Restitution	up to 30 d	83
Violations	Fine, Costs & Restitution	\$0 to \$345	85
Habitual Criminal	Up to Life	Up to Life	119
Violation of Probation	1 Level Higher	1 Level Higher	121

SUMMARY OF ACCEPTANCE OF RESPONSIBILITY GUIDELINES

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Felonies			
Class C (violent)	Up to 30 mos. @ Level V	Up to 22 mos. @ Level V	37
Class C (non-violent)	Up to 1 yr. @ Level V	Up to 9 mos. @ Level V	41
Class D (violent)	Up to 2 yrs. @ Level V	Up to 18 mos. @ Level V	43
Class D (non-violent)	Up to 12 mos. @ II or III	Up to 9 mos. @ II or III	47
Class E (violent)	Up to 15 mos. @ Level V	Up to 11 mos. @ Level V	49
Class E (non-violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	53
Class F (violent)	Up to 9 mos. @ Level V	Up to 7 mos. @ Level V	57
Class F (non-violent)	Up to 12 mos. @ L II for T 11 Up to 18 mos. @ L II T 16	Up to 9 mos. @ L II for T 11 Up to 14 mos. @ L II for T 16	60
Class G (violent)	Up to 6 mos. @ Level V	Up to 4 mos. at Level V	64
Class G (non-violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	67
Misdemeanors			
Class A (violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	72
Class A (escape)	Up to 3 mos. @ Level IV	Up to 2 mos. @ Level IV	74
Class A (property)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	75
Class A (order/decency)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	77
Class A (con. sub.)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	80

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Trademark Counterfeiting(PriorConv/100-999/\$2,000-\$9,999) (7/7/05)	Class G Felony (Nonviolent)	11-926(d)(2)	68
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Video Lottery Cheat Device >\$1500<\$50000	Class G Felony (Nonviolent)	11-1471(a)(b)(d)(e)(l)	69
Video Lottery Cheat Device >\$99,999.99	Class C Felony (Violent)	11-1471(c)(f)(g)(h)(i)(j)	44
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INTRODUCTION

The Delaware Sentencing Accountability Commission (hereinafter referred to as "SENTAC") was created under Title 11, §6580 of the Delaware Code. The overall purpose of the creation of the Commission was to establish a system that emphasizes accountability of the offender to the criminal justice system and accountability of the criminal justice system to the public. In fulfillment of that purpose, the Commission created the sentencing guidelines embodied in this Benchbook. Said guidelines were approved of and implemented by Administrative Directive Seventy-Six of the Supreme Court of Delaware.¹ The guidelines are designed to ensure certainty and consistency of punishment commensurate with the seriousness of the offense and with due regard for resource availability and cost. However, it should be noted that Delaware's sentencing guidelines are voluntary, non-binding, and as such, in the absence of constitutional violations, are not generally subject to appeal.²

This Benchbook is designed to assist sentencing judges, prosecutors and defense attorneys in the formulation of sentences that are consistent with the goals of sentencing reform promulgated by SENTAC. Contained within are recommended sentencing ranges and statutory mandates for each offense. The overall sentencing philosophy of the General Assembly and SENTAC is that offenders should be sentenced to the least restrictive and most cost-effective sanction possible given the severity of the offense, the criminal history of the offender and the focus, which is, above all, to protect the public's safety. Other goals in order of priority include: (1) Incapacitation of the violence-prone offender; (2) restoration of the victim as nearly as possible to the victim's pre-offense status, and (3) rehabilitation of the offender. (64 Del. Laws, c. 402 § 1)

This Benchbook is revised annually to reflect legislative changes since the passage of the Truth in Sentencing Act of 1989.

How to Use This Book

The Table of Contents appears in the front of the book and will serve to guide you to the basic categories within this book. Appearing directly after the Table of Contents is an alphabetical listing of the offenses, their classifications and the corresponding page numbers. Prior to the actual specific categories is a summary of the broad offense categories and their general respective presumptive sentences. Following that you will find the recommended sentences and sentencing mandates for each particular crime in the offense category itself. The general offense categories have been listed in the Table of Contents.

In general, presumptive sentences are based on the classification of the offense, and whether it is violent or non-violent in nature. The majority of crimes have been divided into violent and non-violent categories based upon legislative determination (Title 11, §4201(c)). The recommended penalties for violent crimes are more severe than those prescribed for non-violent crimes in the same class. All Class A Felonies have been designated as violent. All other felony classifications have been separated into violent and non-violent offenses. Whenever appropriate, sentences should reflect the objective of rehabilitation by including specific conditions of probation designed to aid in the treatment and/or vocational training of the offender.

Class A Misdemeanors have been divided into five general categories by SENTAC: Violent MA1, Escape MA2, Property MA3, Order & Decency MA4, and Controlled Substances MA5. The presumptive sentencing pages

¹ Sept. 15th, 1987

² *Siple v State*, 701 A.2d 79, 82-83 (Del. 1997)

for misdemeanors share the same format as the felony offenses. Please note that some sentences require a period of time at one level to be followed by a period of time at another level. (For example: the presumptive sentence for the second conviction of a class A violent misdemeanor is up to 6 months at Level III AND up to 6 months at Level II.) The maximum fine is also included for misdemeanor offenses.

The recommended sentencing range for a particular crime classification, when aggravating or mitigating factors are not present, can be found at the beginning of the crime category. Crimes are listed in order of statute number with respect to title and section numbers, appearing as they would in the Delaware Code. When a particular offense requires specific treatment as mandated by the legislature a notation will be attached to said offense and supplementary notations will follow at the end of a given category. The presumptive sentencing range for a first conviction generally represents 25% of the statutory maximum; while serious aggravating factors may increase the penalty up to 100% of the statutory maximum. However, examples of common aggravated sentences as a result of prior criminal history, excessive cruelty or commission of the offense while under the control of the Department of Correction are contained in the box following the listing of statutes included within the offense category.

Within the Table of Contents you will find a Summary of Drug Offenses that gathers all of the drug offenses in one section of the book for ease of reference. The drug offenses are also listed in their respective offense level classifications. In addition, there is a listing of Aggravating and Mitigating Factors. You will also find the topic "Exceptional Sentences" and under that category are considerations that would take a sentence out of the normal range. Those topics include: (A) Special categories of (1) Domestic Violence and (2) Escape and (B) Habitual Criminal sentences.

Aggravating and mitigating factors are to be used to explain a sentence imposed either above or below the presumptive sentence. Other factors, which do not appear on this list, may be utilized at the discretion of the sentencing judge. Although the increased or decreased penalties for most aggravating/mitigating circumstances are not specified, the "up to 25%" increase/decrease guide should be utilized whenever suitable.

When an offender is sentenced on multiple charges, only the primary charge should carry an enhanced penalty based on prior criminal history. All other charges should receive penalties consistent with or lower than the presumptive sentence for the offense, unless aggravated by some factor specific to the individual charge. In this way, judges can impose serious penalties when necessary and construct meaningful probation sentences to follow incarceration. It should be noted that all sentences that impose a period of incarceration of one or more years at Level V, require that the court must include as part of its sentence a six-month "Reintegration Period" at Custodial Supervision Level IV (quasi-incarceration), III, or II.³

Following the Exceptional Sentences category are recommendations on the sentences appropriate for Violations of Probation. The reporting of these proceedings, along with aggravating factors, should follow the same procedures as for new offenses.

³ Title 11, §4204 (l)

General Sentencing Information:

Levels of Supervision:

There are five levels of supervision in the Delaware criminal justice system as defined according to Title 11, §4204 and SENTAC policy.⁴ They are as follows:

Level I	<i>Unsupervised:</i> Fine or Administrative Supervision, i.e. criminal record checks, checks to determine compliance with program completion, certification of payment of financial obligations, etc.
Level II	<i>Field supervision:</i> 1 to 50 hours of supervision per month. This may be accomplished by office visits or field visits and/or the imposition of special conditions such as payment of a fine.
Level III	<i>Intensive supervision:</i> 1 hr./day and no more than 56 hrs./wk. Level is supervised by officers carrying limited caseloads to allow sufficient time for full follow up. It may include sentencing options such as community service, payment of a fine, day reporting, curfews, etc.
Level IV	<i>Quasi-Incarceration or Partial Confinement:</i> Offender is placed under house arrest with electronic monitoring, a halfway house, a restitution center, a residential treatment facility, &/or a reentry program. As a result, supervision should amount to approximately 9 or more hours daily.
Level V	<i>Incarceration or Full Confinement:</i> Commitment to the Department of Correction for a period of incarceration with or without the imposition of a fine as provided by law.

Probationary Sentences:

A. Maximum Probationary Sentences:

1. The period of probation for violent felonies⁵ is limited to 24 months.⁶
2. The period of probation for Title 16 felonies⁷ is limited to 18 months.⁸
3. The period of probation for all other offenses is limited to 1 year.⁹

B. Multiple Sentences:

In most cases, if an offender is serving more than one sentence as a result of convictions in more than one case, the offender shall not serve a consecutive period of probation or suspension in excess of the above time limitations. Instead, such probation shall be deemed to run concurrently with the previously imposed sentence of probation. However, the limitations of this section shall not apply to a sentence imposed for a conviction involving an offense committed while the offender was on probation or suspension of sentence.¹⁰

⁴ *Master Plan for Effective Sentencing Reform in Delaware*, SENTAC (May 1, 1986).

⁵ Title 11, §4201(c)

⁶ Title 11, §4333 (b)(1)

⁷ Title 16 (Health and Safety)

⁸ Title 11, §4333 (b)(2)

⁹ Title 11, §4333 (b)(3)

¹⁰ Title 11, §4333 (c)

C. Exceptions to the General Rules

- 1.) The above limits do not apply to sex offenses¹¹ if the sentencing court determines on the record that a longer period of probation will reduce the likelihood of re-offending.¹²
- 2.) The above limits shall not apply to Title 11 violent felonies¹³ if the sentencing court determines on the record that public safety will be enhanced as a result.¹⁴
- 3.) Limits may be exceeded if additional time is necessary in order to collect restitution, but must be served at Accountability Level I.¹⁵
- 4.) Limits may be exceeded by up to 90 days if more substance abuse treatment time is needed.¹⁶
- 5.) Total probation time cannot exceed maximum commitment time, or one year, whichever is greater.¹⁷
- 6.) Limits do not apply to the Title 11, §4204(l) sentences which provide for a six-month transition period from Level V incarceration to a lower level of supervision. The six-month transition period may be in excess of the maximum statutory sentence of imprisonment.¹⁸
- 7.) Portions of a sentence designated to be served at Accountability Level IV (quasi-incarceration) are not considered a "period of probation or suspension of sentence" as used in this section.¹⁹
- 8.) Ex Post Facto Considerations. The above sections, A, B and C (1-4), are inapplicable to sentences imposed prior to June 1, 2003 unless an application has been made to the Court by the Department of Correction for sentence modification based upon good cause and an order is entered to that effect.²⁰

¹¹ Title 11, §761: 763 Sexual harassment, 764 Indecent Exposure 2d°, 765 Indecent Exposure 1st°, 766 Incest, 767 Unlawful Sexual Contact 3rd°, 768 Unlawful Sexual Contact 2d°, 769 Unlawful Sexual Contact 1st°, 770-773 Rape, 776 Sexual Extortion, 777 Bestiality, 778 Continuous Sexual Abuse of a Child, 779 Dangerous Crime Against a Child, 780 Female Genital Mutilation, 1108 Sexual Exploitation of a Child, 1109 Unlawful Dealing in Child Pornography, 1110 Subsequent Convictions of 1108 and 1109, 1111 Possession of Child Pornography, 1112 Sexual Offenders/Prohibitions from School Grounds, 1112A Sexual Solicitation of a Child

¹² Title 11, §4333 (d)(1)

¹³ Title 11, §4201 (c)

¹⁴ Title 11, §4333 (d)(2)

¹⁵ Title 11, §4333 (d)(3)

¹⁶ Title 11, §4333 (e)

¹⁷ Title 11, §4333 (f)

¹⁸ Title 11, §4333 (g)(1)

¹⁹ Title 11, §4333 (g)(2)

²⁰ Title 11, §4333 (j)

A Word of Caution:

Please remember that under the Truth in Sentencing Act, there is no parole, and all Level V sentences will be served with only very limited good time possibilities. This means that instead of serving from 25% to 50% of the sentence, a minimum of 75% will be served prior to release.

It should be noted that, absent extraordinary reasons, any Level IV (quasi-incarceration) sentence should only be imposed as an alternative to incarceration. Any person sentenced to Level IV (quasi-incarceration) should be held at Level V until space is available. If an individual can be held at Level III while awaiting Level IV (quasi-incarceration), please consider whether a Level III sentence might not be more appropriate.

SENTAC STATEMENT OF POLICY

1. The purposes of the Sentencing Standards are as follows: (a) To incapacitate, through incarceration, the violence prone offender and (b) To avoid, in so far as possible, the incarceration of the non-violent offender for the purposes of:
 - Enabling the offender to make any ordered restitution in a more timely manner.
 - Enabling participation in programs aimed at rehabilitation of the offender.
 - Conserving the limited incarceration facilities for use by violent felons.
2. For the purposes of sentencing, a violence-prone offender is defined as one for whom the current most serious offense is a crime included in the current list of violent crimes. (See definition sheets)
3. For the purposes of sentencing, only those offenses adjudicated at age 14 or older shall be counted in prior history.
4. For the purposes of sentencing, a conviction-free period of ten (10) years after final release from incarceration, or from date of sentence if only probation at levels I thru IV was ordered, shall be sufficient to "wash" the criminal history prior to that date. Felony A and Felony B crimes are excluded from this policy and should always be considered at time of sentencing.
5. In an instance where an offender, who is awaiting sentencing after conviction, is brought before the court and convicted of additional charges, the sentencing order may include all the offenses in a single order. The earlier unsentenced offenses shall not be considered in the prior history of the later offenses unless the later offenses occurred in the period after conviction on the earlier offenses.
6. When it can be determined that two or more prior convictions were the result of a single incident, only one conviction per incident shall be considered for criminal history purposes in reaching a decision on the appropriate guideline. (Example: Conviction on same date of Robbery 2 and Possession of Deadly Weapon During Commission of Felony = 1 prior violent Felony.)

In addition to its normal definition, convictions for a single incident shall include all convictions resulting from a single indictment or information.

7. When sentencing on multiple charges, prior criminal history should be considered only in determining the guideline for the "lead" or most serious offense. Sentences for other current charges shall be calculated based on zero criminal history.
 - a. Whenever a defendant is sentenced on multiple offenses to probation, the level of probation should be the same for all concurrent sentences. Senate Bill 50, codified as 11 Delaware Code Section 4333(c) makes with narrow exceptions, all periods of probation concurrent. Section 4333(b) also, with exceptions, places limits on the length of probation. If an offender is sentenced to different levels of probation, Probation and Parole places him or her in the highest level of probation imposed and that classification applies to all sentences imposed even at different levels. Title 11 Section 4333(i) empowers the Department of Correction to evaluate

offenders after 60 days from the date of sentence. Such evaluation is to determine the appropriate level of probation within Level 3, 2, or 1.

This new policy does not apply to Level 1 – Restitution Only.

8. When sentencing on multiple charges and the lead offense is a violent felony, time for other current violent felonies will be added to Level V time.
9. When considering multiple charges, a violent felony shall be considered to be the most serious offense, for sentence calculation purposes, even though non-violent felonies of higher classification are present.
10. When ordering a sentence, the Judge will order the offender to a specific initial level of supervision (Assessment of Risk). The judge may recommend a specific treatment program. The DOC will make every effort to assign the offender, or procure admittance into, the recommended program, or equivalent, as slots become available.
11. In those cases where the Court would consider a level IV alternative to Level V incarceration and no vacancy exists, the judge should sentence the offender to Level IV, with the proviso that the offender be held at Levels V, IV, and III at the discretion of the Court until a Level IV facility becomes available.
12. All probation sentences handed down at one time (levels I, II, and III) should in the normal case be imposed to run concurrently.
13. Traffic offenses as listed in Del.C, Title 21, with the exception of section 2810, Driving after Judgment Prohibited, will not currently come under the purview of the Sentencing Standards. However, in the interest of conserving expensive and limited prison space for the violent and proven incalcitrant offender, it is strongly recommended that Title 21 offenders not be given a sentence to Level V incarceration unless they have previously been sentenced to, and failed at, supervision in Level III and Level IV, or unless incarceration is mandated by law.
14. Repetitive criminal history, as an aggravating factor, is defined as conviction or adjudication for the same or similar offense on two or more previous occasions. This policy is subject to the limitations outlined in Policy Nos. 3 and 4, and to the limitations outlined in the various misdemeanor presumptive sentencing standards.
15. Excessive cruelty, as an aggravating factor, is defined as those facts surrounding the commission of a violent felony, which demonstrate such a callousness and cruelty towards the victim of the offense as to shock the conscience of the court.
16. Aggravating factors for the use of Level V as sanction for the non-violent categories of misdemeanor should be limited to objective factors, such as: Vulnerability of victim due to age or impairment Lack of Amenability – If offender is or was already at or above the presumptive Level of Supervision.
17. When an offender is released from incarceration by any means (good time credits, conditional release, etc.) the release will be to the highest level specified by the court, or by statute, for any unserved sentence, or portion thereof. If no level has been specified, release will be to Level II by default.
18. The supervisory levels (Level IV [Quasi-Incarceration]; Level III [Intensive Supervision]; etc.) refer to the perceived risk and resultant control to be exercised over the individual. An offender may, as a result of evaluation, be assigned to any type of treatment program without affecting the supervision level. Therefore, a change in supervisory level does not require a change in treatment program.
19. For purposes of determining conformance to standard, the final sentence, after any suspensions, is the determinant factor. For example, if a given sentence is 2 years at Level V suspended for 2 years at Level II, the Level II sentence is the portion which will actually be served and, therefore, the portion which will be considered as conforming (or not conforming) to the standard.

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20. In those instances involving non-violent felonies, where a decision to incarcerate, with appropriate aggravating factors, has been made, the sentence should be UP TO, but NOT IN EXCESS of, 25% of the statutory maximum for the crime.
 21. In those instances involving misdemeanors, where, due to stated aggravating factors, a decision has been reached that a sentence to incarcerate is unavoidable; the sentence should not exceed the "recommended maximum" as noted in the standards.
 22. In instances when a non-TIS sentence to Level V is followed by a sentence to Level IV and/or Level III supervision, the Board of Parole may grant parole as follows:
 - a. Parole to the highest level specified by the original sentencing order. Should a violation occur during the parole period, the offender would be returned before the Board of Parole for violation of parole. Upon successful completion of the required period, the Department may, if appropriate, move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order. (Revised 9/22/98)
 - b. Offenders released upon reaching their short-time release date (conditional release) shall be released to serve the balance of the Level V sentence (i.e. conditional release supervision period) to the next highest level specified by the original court order or other subsequent sentencing order. If appropriate, the Department may move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order.
 - c. If a paroled or mandatory-released offender is serving a court-ordered Level IV or III sentence and the unexpired portion of the Level V sentence is less than one (1) year, the Board of Parole, upon application by the Department of Correction, may issue an order discharging the offender from the balance of the Level V sentence, once an equivalent period has been successfully served at Level IV or III.
 23. In those cases where an offender is subject to sentences for more than one offense, and when the combined sentence to intermediate sanction at level IV is in excess of one year, including any work release time on a sentence of incarceration, the Department of Correction shall, absent specific objections from the judge(s), be permitted to move the offender, after one year, to a lower level of supervision, providing the offender has met, and continues to meet, the regulations and any special conditions placed upon him/her by the courts. Any lapse in meeting those conditions shall be grounds for a return to completion of the Level IV sentence without recourse to the courts. In like manner, combined sentences to Level III in excess of twelve months shall be subject to movement to a lower level. Such movements, both up and down, will have no effect on the overall length of sentence, except when a formal violation report is filed with the court.
 24. Any person failing to return to a Level IV facility shall be deemed to be on escape status. The facility shall cause a warrant to be issued charging the offender with Escape After Conviction and identifying him as a Level IV escapee. Any such person arrested on the warrant shall be returned to the original sentencing court for both a violation hearing and the new charge.
 25. Where a defendant is directly sentenced to Level IV Work Release Center, residential treatment, or home confinement and has awaited placement pending slot availability at Level V for a period of 90 days or one half of the Level IV sentence (whichever is less), the Department of Correction shall make appropriate sentence modification recommendations to the sentencing Judge.
 26. Level IV, work release center or halfway house, is deemed quasi-incarceration. A defendant serving a sentence at Level IV, work release or halfway house, i.e., quasi-incarceration, is entitled to earn "good time credits" pursuant to 11 Del. C s4381(b) and (c).

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27. It is further the policy of SENTAC that individuals sentenced to Level IV (any variation), who must serve a term at Level V awaiting placement at Level IV, shall, during the time served with good conduct at Level V, be awarded good time pursuant to 11 Del. C. S4381(b)(2).
 28. Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge.
 29. With regard to sentences of incarceration conditioned by section 4204(k) of Title 11, as amended in 1997, it shall be understood that such sentences are to be served in their entirety at level V, and that there shall be no diminution of such sentence by any of the normally available early release devices, including (but not limited to) good time credits, furlough, work release or community transition. Because such sentences add significant complexity to the management of the population of incarcerated offenders, and, if used indiscriminately, would substantially increase the prison population, Section 4204(k) should be used by judges only in exceptional circumstances.
 30. Since imposition of a sentence pursuant to 11 Del C., sec 4204(k) is, in effect, a departure from the presumptive sentencing guidelines; the reason for use of Sec 4204(k) must be stated on the record and included in the sentencing order. When Section 4204(k) is used with a sentence for an escape-related offense, the reasons for its use are self explanatory and need not be stated on the record or sentencing order.
 31. For any Title 16 offense in which no fine is imposed, the Court shall consider imposing a SARTEP (Substance Abuse, Rehabilitation, Treatment, Education and Prevention Fund) civil penalty not to exceed \$300.
 32. There is a significant cost benefit to the Court, police agencies, attorneys, Department of Correction, the victim and the public in general when a defendant resolves a case early in the criminal process and admits his or her involvement. As such, the Commission, in recognition of these efficiencies, reduces the guideline sentence by 25% when a defendant pleads guilty to the offense and resolves the matter 30 days prior to the scheduled trial. This guideline will only apply when there has been an admission of guilt and is not applicable to Robinson or nolo contendere pleas.

Please familiarize yourself with the above policies and follow them, insofar as possible, in each and every case. If questions should arise, contact either a member of the Commission or the SENTAC staff, Ron Keen, at (302) 577-8728 or Ronald.Keen@state.de.us .

MEMBERS OF THE SENTENCING ACCOUNTABILITY COMMISSION

Description of Commissioner Position	Commission Member:
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Chair: Honorable William C. Carpenter, Jr.
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Honorable T. Henley Graves
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Honorable Alan G. Davis
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Honorable Chandlee Johnson Kuhn
The Attorney General or the Attorney General's designee;	Honorable Joseph R. Biden III
The Public Defender or the Public Defender's designee;	Honorable Brendan J. O'Neill
The Commissioner of Corrections or the Commissioner of Corrections' designee;	Honorable Carl Danberg
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor	Honorable Bernard Pepukayi
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices 1 by the Pres. Pro Tempore of the Senate	Honorable Jerome O. Herlihy
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor	Martin W. Johnson, III Chief Delaware Police Chief's Council
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 1 by the Speaker of the House	Colonel Robert Coupe

Class A Felony

Violent (FAV):

Sentence Range (Violent Category) FAV (Exclusive of 1st Degree Murder (11-4209))	
Statutory Range	15 yrs to life (First 15 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	15 yrs @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-634	<u>Child Murder by Abuse/Neglect 1st Degree</u> (a) Reckless: Death of Vt<14 y.o.a. by (1) abuse/ neglect/ (2) previous pattern
11-635	<u>Murder 2nd Degree (see note)</u> (1) Reckless:Cruel,Wicked,DepravedIndiff/ (2) Neg: Comm.Fel
11-636	<u>Murder 1st Degree (see note)</u> (a)(1)Intentional/ (2)Reckless:Comm.Fel/ (3)Causes Suicide by Force/ (4)Reckless: Death LEO, CO, FF/ (5)Death Detonation/ (6)Prevent Arrest
11-773	<u>Rape 1st Degree (see note)</u> (a)(1)W/out Consent & Serious Injury/ (2)Comm.Crime/ (3)DeadlyW/ (4)Principle-Accomp/ (5)Vt<12,D>18/ (6)Vt<16 & D=Trust
11-777A(e)(3)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778(f)(1)	<u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree (see note)</u>
11-787 b(2)(c), b(4), c	<u>Trafficking of Persons & Involuntary Servitude (see note)</u>
11-1304	<u>Hate Crime (Underlying Offense: Class A Felony) (see note)</u>
11-1339	<u>Adulteration: Death</u>
16-1136(a)	<u>Abuse/Neglect of Patient: Death</u>
31-3913(c)	<u>Abuse/Neglect of Infirm Adult: Death</u>

Sentences For Prior Criminal History Categories	
Offense committed while on release or pending trial or sentencing	15 to 25 yrs @ Level V
Two or more prior felonies	15 to 25 yrs @ Level V
One prior violent Felony	15 to 25 yrs @ Level V
Two or more prior violent Felonies	15 to Life @ Level V
Excessive Cruelty	15 to Life @ Level V

Supplemental Notations for Class A Felonies:

11-4381(a)	Probation is not available for offenders sentenced to life.
	All sentences for over 1 year at Level V require a six-month reintegration at Levels IV (quasi-incarceration), III, OR II.
	All Criminal fines require 18% surcharge for Victims fund.
	All Drug crimes require additional 15% surcharge for the rehabilitation fund.
	Restitution shall be ordered for losses to victim. (Title 11, §4106)
	Costs of prosecution may be ordered. (Title 11, §4204(i))

11-635	<u>Murder 2nd Degree. Reclassified in 6/2003</u>
11-636	<u>Murder 1st Degree</u> <ul style="list-style-type: none"> 4209(d)(1): The following sentence was added in regard to sentencing by the court: The jury's recommendation concerning whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist shall be given such consideration as deemed appropriate by the Court in light of the particular circumstances or details of the commission of the offense and the character and propensities of the offender as found to exist by the Court. The jury's recommendation shall not be binding upon the Court. 4209(d)(4): After the Court determines the sentence to be imposed, it shall set forth in writing the findings upon which its sentence is based. If a jury is impaneled, and if the Court's decision as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist differs from the jury's recommended finding, the Court shall also state with specificity the reasons for its decision not to accept the jury's recommendation.
11-773	<u>Rape 1st Degree</u> <ul style="list-style-type: none"> (c) A person convicted under this section shall be sentenced to life without benefit of probation, parole or other reduction if: (1) vt < 16 + serious injury, (2) permanent disfigures or disables (3) 3 or more vts or (4) prior conviction of unlawful sexual intercourse 1st degree, rape 1st or 2nd degree or equivalent offense 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is < 14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-777A(e)(3)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> (e)(3) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

11-778(f)(1)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree:</u></p> <p>b. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:</p> <ul style="list-style-type: none"> • 1. at the time of the offense the person inflicts serious physical injury on the victim; or • 2. the person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member of the victim's body; or • 3. the person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection against 3 or more separate victims; or • 4. the person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.
11-787 b(2)(C), b(4), c	<p><u>Trafficking of Persons and Involuntary Servitude</u></p> <ul style="list-style-type: none"> • (b)(2)(C) Sexual servitude of a minor in which overt force or threat was involved is a Class A felony. • (b)(4) Trafficking of persons for use of body parts. A person is guilty of trafficking of persons for use of body parts when a person knowingly (i) recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale or (ii) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this Section. Such person shall be guilty of a Class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-1304(b)(4)	<p><u>Hate Crime (Underlying Offense: Class A Felony)</u></p> <p>If the underlying offense is a Class A Felony, the minimum sentence of incarceration shall be doubled.</p>

Class B Felony

I.) Violent (FBV)

Sentence Range (Violent Category) FBV	
Statutory Range	2 to 25 yrs (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2 – 5 yrs
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-606	<u>Abuse of Pregnant Female 1st Degree</u> Intentionally causes termination through violence without consent
11-613	<u>Assault 1st Degree (see note)</u> (a)(1) Intentional: Serious Injury & DW/ (2)Perm.Disfiguremt/ (4)Comm.Fel+SeriousInjury/ (5)Serious Injury: LEO, FF, (6) Medical Personnel, (7)>62y.o.a (a)(3) Recklessly: Serious Injury/ (4)Comm.Fel+SeriousInjury
11-615	<u>Assault of Child by Abuse/Neglect</u> (a) Recklessly: Serious Injury of Vt<14 y.o.a. by (1)abuse/ neglect/ (2)previous pattern
11-632	<u>Manslaughter (see note)</u> (1)Recklessly: Death/ (2)Intent=Serious Injury: Death/ (3)Intentionally: Death but Extreme Emotion/ (4)Non-therapeutic Abortion: Death/ (5)Intentionally Causes Suicide
11-633	<u>Child Murder by Abuse/Neglect 2nd Degree</u> (a)Negligently: Death of Vt<14 y.o.a. by (1)abuse, neglect/ (b)previous pattern
11-771	<u>Rape 3rd Degree (see note) (7/26/06)</u> (a)(1) Intercourse: vt<16 & D>10 yrs older/ vt<14 & D=19+ y.o.a. (a)(2) Penetration: (a) w/out consent; Comm.fel; SeriousInjury/ (b) vt<16,Comm.Fel.; injury (a)(3) Intercourse or penetration, V>16, V<18, defendant at least 4 yrs older than victim and in a position of trust, authority, or supervision over the child, or is an invitee of a person who stands in a position of trust, authority or supervision over the child.
11-772	<u>Rape 2nd Degree (see note) (7/26/06)</u> (a)(1)Intercourse w/out consent/ (2)Penetration: (a) w/out consent & serious injury/ (b) w/out consent & Comm.Crime/ (c)vt<16 & Serious Injury/ (d) w/out consent & DW or threat/ (e)vt<16 & DW or threat/ (f) w/out consent & Principle-accomp/ (g)vt<12 & D+18+/ (h) vt < 16 & D= trust
11-776	<u>Continuous Sexual Abuse of Child (see note) (7/26/06)</u>
11-777	<u>Dangerous Crime Against Child (see note) (7/26/06)</u>
11-777A(e)(2),(e)(3)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>

11-778(f)(2)	<u>Sexual Abuse of a Child by a person in a position of trust authority or supervision in the first degree</u> The minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust authority or supervision in the first degree as set forth in subsection (b) of this section shall be 10 years at Level V.
11-778(f)(3)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree:</u> As set forth in subsection (c) of this section is a class B felony.
11-783A	<u>Kidnapping 1st Degree</u> Unlawful restraint w/out voluntary release of vt unharmed prior to trial to: (1) hold vt for ransom/ (2) use vt as hostage/ (3) Comm.fel/ (4) injure or sexually abuse vt/ (5) terrorize vt or 3d party/ (6) take child<16
11-826(a)(2)	<u>Burglary 1st Degree (Vt > 62 y.o.a.) (see note)</u> (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant
11-832	<u>Robbery 1st Degree (see note)</u> (a)(1)injury to nonparticipant/ (2) DW or threat of/ (3)armed & use or threat/ (4)vt>62)
11-836(a)(4-6)	<u>Carjacking 1st Degree</u> (a)(4)DW or threat/ (5)Injury/ (6)Vt>62 or <14 y.o.a
11-1108	<u>Sexual Exploitation of Child (see note)</u>
11-1109	<u>Dealing in Child Pornography</u>
11-1253	<u>Escape After Conviction (Special Escape Category May Apply)(see note)</u> Injury
11-1254(b)	<u>Assault in Detention Facility w/Serious Injury (see note)</u>
11-1304(b)(3)	<u>Hate Crime (Underlying Offense: Class C Felony)</u>
11-1304(b)(4)	<u>Hate Crime (Underlying Offense: Class B Felony) (see note)</u>
11-1447	<u>Possession of Deadly Weapon during Commission of a Felony (see note)</u>
11-1447A	<u>Possession of Firearm during Commission of a Felony (see note)</u>
11-1449	<u>Wearing Body Armor during Commission of a Felony (see note)</u>
11-1503	<u>Racketeering (see note)</u>
16-4752	<u>Drug dealing – Aggravated possession</u>
16-4757(c)(2)	<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)</u>

II.) Nonviolent (FBN)

Crimes in Category

11-787 b(1)(A), b(1)(B),b(2)(B), b(3), c	<u>Trafficking of persons and involuntary servitude (see note)</u>
11-1110	<u>Unlawful Dealing Child Pornography (2nd offense of 11- 1109)</u>
31-610(a)(3)	<u>Trafficking in Food Stamps (Firearms/Ammunition/Controlled Substances) (see note)</u>

Sentences For Prior Criminal History Categories	
Offense committed while on release or pending trial/sentencing	Up to 10 yrs at Level V
Two or more prior felonies	Up to 10 yrs at Level V
One prior violent Felony	Up to 10 yrs at Level V
Two or more prior Violent Felonies	Up to 25 yrs at Level V
Excessive Cruelty	Up to 25 yrs at Level V

Supplemental Notations For Class B Felony:

If crime is a secondary offense, use the non-aggravated presumptive.	
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.	
All Criminal fines require 18% surcharge for Victims' fund.	
All Drug crimes require additional 15% surcharge for rehabilitation fund	
Restitution shall be ordered for losses to victim. (Title 11, §4106)	
Costs of prosecution may be ordered. (Title 11, §4204(i))	
11-613	<u>Assault 1st Degree. Reclassified in 6/2003</u>
11-632	<u>Manslaughter. Reclassified in 6/2003</u>
11-771 11-771(a)(2)	<u>Rape 3rd Degree</u> <ul style="list-style-type: none"> (c) If a child is born as a result of offense and remains in the custody of the vt or vt's family, timely child support payments ordered by Family Ct shall be a condition of probation 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-772	<u>Rape 2nd Degree</u> <ul style="list-style-type: none"> (c) Minimum mandatory sentence: 10 yrs at Level V but see below. 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life(7/26/06)
11-776	<u>Continuous Sexual Abuse of Child</u> 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-777	<u>Dangerous Crime Against Child</u> <ul style="list-style-type: none"> (b) Mandatory Minimum for 2nd offense= life imprisonment. (c) Defendants sentenced pursuant to this statute shall be not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until sentence is served. 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-777A(e)(2), (e)(3)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony. (e)(3) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

11- 787(b)(1)(A), 11- 787(b)(1)(B), 11- 787(b)(2)(B), 11-787(b)(3) 11-787(c)	<u>Trafficking of persons and involuntary servitude</u> <ul style="list-style-type: none"> • (b)(1)(A) by causing or threatening to cause physical harm to any person which is a class B felony; • (b)(1)(B) by physically restraining or threatening to physically restrain another person which is a class B felony; • (b)(2)(B) sexual servitude of a minor in which the minor had not attained the age of 14 years and which did not involve overt force or threat is a class B felony; • (b)(3) Trafficking of persons for forced labor or services. A person is guilty of trafficking of persons for forced labor or services when a person knowingly (i) recruits, entices, harbors, transports, provides or obtains by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or (ii) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this Section. Trafficking of persons for forced labor or services is a class B felony. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater. 												
11-826(a)(2)	<u>Burglary 1st Degree (Vt> 62 y.o.a.)</u> <ul style="list-style-type: none"> • (b) Minimum Mandatory Sentences: (b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt <table> <tr> <td>First Conviction</td><td>24 m. to 48 m. @ Level V</td></tr> <tr> <td>On release pending trial/sentence</td><td>36 m. to 60 m. @ Level V</td></tr> <tr> <td>2 or more Prior Felonies</td><td>48 m. to 96 m. @ Level V</td></tr> <tr> <td>1 Prior Violent Felony</td><td>48 m. to 96 m. @ Level V</td></tr> <tr> <td>2 or more Prior Violent Felonies</td><td>60 m. to 120 m. @ Level V</td></tr> <tr> <td>Excessive Cruelty</td><td>60 m. to 120 m. @ Level V</td></tr> </table>	First Conviction	24 m. to 48 m. @ Level V	On release pending trial/sentence	36 m. to 60 m. @ Level V	2 or more Prior Felonies	48 m. to 96 m. @ Level V	1 Prior Violent Felony	48 m. to 96 m. @ Level V	2 or more Prior Violent Felonies	60 m. to 120 m. @ Level V	Excessive Cruelty	60 m. to 120 m. @ Level V
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1 Prior Violent Felony	48 m. to 96 m. @ Level V												
2 or more Prior Violent Felonies	60 m. to 120 m. @ Level V												
Excessive Cruelty	60 m. to 120 m. @ Level V												
11-832	<u>Robbery 1st Degree</u> <ul style="list-style-type: none"> • (b) Minimum Mandatory sentence of (1) 3 years at Level V or (2) 5 years at Level V if the conviction is for an offense that was committed within 10 years of the date of a previous conviction or termination of the date of confinement from such previous conviction, whichever date is later. Sentence not subject to terms of §4215 (Previous Conviction Enhancement) • (c) Sentencing provisions equally applicable to Attempt. • Original jurisdiction over juveniles charged with Robbery 1st shifted to Superior Court with reverse amenability available. 1 year mandatory commitment for Robbery 1st involving weapons or serious physical injury or for PFDCF in Family Court. 												
11-1108	<u>Sexual Exploitation of Child</u> Any person convicted of a 2nd or subsequent violation shall be sentenced to life.(Title 11, §1110)												
11-1253	<u>Escape After Conviction</u> Any sentence imposed shall not run concurrently with any other sentence.												

11-1254(b)	<p><u>Assault in Detention Facility w/Serious Injury</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence: 3 yrs at Level V to begin immediately upon sentencing. • Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. • Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed.
11-1304(b)(4)	<p><u>Hate Crime (Underlying Offense: Class B Felony)</u></p> <p>If the underlying offense is a Class B Felony, the minimum sentence of incarceration shall be doubled.</p>
11-1447	<p><u>Possession of Deadly Weapon during Commission of a Felony</u></p> <ul style="list-style-type: none"> • (b) Any sentence imposed shall not be subject to suspension, good time, parole or probation. • (c) Any sentence imposed shall not run concurrently. The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense. • (d) Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available.
11-1447A	<p><u>Possession of Firearm during Commission of a Felony</u></p> <ul style="list-style-type: none"> • (b) Minimum Mandatory Sentence= 3 years at Level V • (c) If conviction represents 3rd felony conviction= minimum mandatory sentence= 5 years at Level V • (d) Any sentence imposed shall not be subject to suspension, good time, parole or probation. • (f) Juveniles over the age of 15 shall be tried as an adult, with reverse amenability available
11-1449	<p><u>Wearing Body armor during Commission of a Felony</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence= 3 years at Level V which shall not be subject to suspension, parole or probation • Any sentence shall not run concurrently. • The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense • Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available
11-1503	<p><u>Racketeering</u></p> <ul style="list-style-type: none"> • 1504(a): Minimum fine= \$25,000 • 1504(b): Mandatory forfeiture of property; Superior Ct shall authorize seizure by AG • 1504(c): In lieu of fine, Defendant may be ordered to pay 3x gross value gained or gross loss caused, whichever is greater, together with investigation, prosecution and court costs reasonably incurred.
16-4752	<p><u>Drug dealing – Aggravated possession</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 quantity;</p> <p>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;</p> <p>(3) Possesses a controlled substance in a Tier 5 quantity;</p> <p>(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or</p> <p>(5) Possesses a controlled substance in a Tier 2 quantity as defined in any of Section 4751C(4)a.-i., of this title and there are two aggravating factors.</p>
16-4757(c)(2)	<p><u>Miscellaneous Drug Crimes. Solicitation of Multiple Prescription Drug Crimes:</u></p> <p>A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of 4757 and there is an aggravating factor in connection with at least one of the times.</p>

31-610(a)(3)	<u>Trafficking in Food Stamps (Firearms/Ammunition/Controlled Substances)</u> May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act
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Class C Felony (Violent)

I.) (FCV)

Sentence Range (Violent Category) FCV	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 30 months @ Level V
Acceptance of Responsibility	Up to 22 months @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-605	<u>Abuse of Pregnant Female 2nd Degree</u> Recklessly causes termination through violence without consent
11-612 (11)	<u>Assault 2nd Degree</u> The person recklessly or intentionally causes physical injury to a law enforcement officer, security officer, fire policeman, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class c felony.
11-630A	<u>Vehicular Homicide in the First Degree (see note)</u> DUI & Criminally Negligent Driving: death
11-770	<u>Rape 4th Degree</u> (a)(1) vt<16/ (2) vt<18 & D=30+, unless married/ (3)penetration (a)w/out consent or (b) vt<16/ vt>16 but< 18 & D= trust
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778(f)(4)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)</u>
11-783	<u>Kidnapping 2nd Degree</u> Unlawful restraint w/ voluntary release of vt unharmed prior to trial to: (1) hold vt for ransom/ (2) use vt as hostage/ (3) Comm.fel/ (4) injure or sexually abuse vt/ (5) terrorize vt or 3d party/ (6) take child<16
11-803	<u>Arson 1st Degree</u> Intentionally damage bldg by fire/explosion w/knowledge that bldg is either: (1) occupied or (2) it is within reason that it would have been
11-825	<u>Burglary 2nd Degree (Vt> 62 y.o.a.) (see note)</u> (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant
11-826	<u>Burglary 1st Degree (see note)</u> (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant
11-836(a)(1- 3)	<u>Carjacking 1st Degree</u> (a)(1) Class D Felony or higher/ (2) DUI/ (3) Drug Offense
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1112A	<u>Child Sex Solicitation</u>

11-1253	<u>Escape After Conviction (Special Escape Category May Apply)(see note)</u> Force/Threat/Deadly Weapon
11-1304(b)(3)	<u>Hate Crime (Underlying offense: Class D Felony)</u>
11-1312	<u>Stalking w/ Deadly Weapon (see note)</u>
11-1353	<u>Promoting Prostitution 1st Degree</u> (1) Compels or profits by force or intimidation/ (2) Profits by prostitute < 16 y.o.a
11-1455	<u>Firearm Transaction on Behalf of Another (Prior Conviction)</u>
16-1136(a)	<u>Abuse/Neglect of patient in Facility</u> (serious physical injury, sexual penetration, sexual intercourse)
16-4753	<u>Drug dealing – Aggravated Possession;(see note)</u>
16-4757(c)(1)	<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)</u>
31-3913(b)	<u>Exploitation of Infirm Adult (>\$50,000/Prior Conviction)</u>

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 5 years @Level V
Two or more prior felonies	Up to 5 years @ Level V
One prior Violent felony	Up to 5 years @ Level V
Two or more prior violent felonies	Up to 10 years @ Level V
Excessive cruelty	Up to 10 years @ Level V

Supplemental Notations for Class C Violent Felonies

If crime is secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims' fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-630A	<u>Vehicular Homicide 1st Degree</u> <ul style="list-style-type: none"> (b) Minimum mandatory sentence = 2 years which shall not be subject to suspension, probation, parole, furlough, work release or supervised custody for the first 18 m. Every person >16 y.o.a., shall be treated as an adult, subject to reverse amenability provisions, except that mandatory minimum sentences in (b) shall not apply. Incarceration, if ordered, shall be initially served in juvenile facility until 18 y.o.a and then shall continue in an adult facility.
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-778(f)(4)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first 16-4760</u> as set forth in subsection (d) (intentionally engages in sexual intercourse or sexual penetration with a child and the Victim >16 <18) of this section is a class C felony.

11-825	<p><u>Burglary 2nd Degree (Vt > 62 y.o.a.)</u></p> <ul style="list-style-type: none"> (b) Minimum Mandatory Sentences: (1) 1 yr. at Level V or (2) 3 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. (c) Sentencing provisions equally applicable to Attempt <table border="0"> <tr> <td>First Conviction</td><td>12 m. to 36 m. @ Level V</td></tr> <tr> <td>On release pending trial/sentence</td><td>18 m. to 36 m. @ Level V</td></tr> <tr> <td>2 or more Prior Felonies</td><td>36 m. to 72 m. @ Level V</td></tr> <tr> <td>1 Prior Violent Felony</td><td>36 m. to 72 m. @ Level V</td></tr> <tr> <td>2 or more Prior Violent Felonies</td><td>48 m. to 96 m. @ Level V</td></tr> <tr> <td>Excessive Cruelty</td><td>48 m. to 96 m. @ Level V</td></tr> </table>	First Conviction	12 m. to 36 m. @ Level V	On release pending trial/sentence	18 m. to 36 m. @ Level V	2 or more Prior Felonies	36 m. to 72 m. @ Level V	1 Prior Violent Felony	36 m. to 72 m. @ Level V	2 or more Prior Violent Felonies	48 m. to 96 m. @ Level V	Excessive Cruelty	48 m. to 96 m. @ Level V
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11-826	<p><u>Burglary 1st Degree</u></p> <ul style="list-style-type: none"> (b) Minimum Mandatory Sentences: (b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. (c) Sentencing provisions equally applicable to Attempt Presumptive sentences: <table border="0"> <tr> <td>First Conviction</td><td>24 m. to 48 m. @ Level V</td></tr> <tr> <td>On release pending trial/sentence</td><td>36 m. to 60 m. @ Level V</td></tr> <tr> <td>2 or more Prior Felonies</td><td>48 m. to 96 m. @ Level V</td></tr> <tr> <td>1 Prior Violent Felony</td><td>48 m. to 96 m. @ Level V</td></tr> <tr> <td>2 or more Prior Violent Felonies</td><td>60 m. to 120 m. @ Level V</td></tr> <tr> <td>Excessive Cruelty</td><td>60 m. to 120 m. @ Level V</td></tr> </table>	First Conviction	24 m. to 48 m. @ Level V	On release pending trial/sentence	36 m. to 60 m. @ Level V	2 or more Prior Felonies	48 m. to 96 m. @ Level V	1 Prior Violent Felony	48 m. to 96 m. @ Level V	2 or more Prior Violent Felonies	60 m. to 120 m. @ Level V	Excessive Cruelty	60 m. to 120 m. @ Level V
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11-1105	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class C felony, the underlying offense must be a class D felony. See page 114 for listing of qualifying underlying offenses for this statute.</p> <p>"Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>												
11-1253	<p><u>Escape After Conviction</u></p> <p>Any sentence imposed shall not run concurrently with any other sentence.</p>												
11-1312	<p><u>Stalking w/ Deadly Weapon</u></p> <ul style="list-style-type: none"> (6) If act(s) has been previously prohibited by court order or sentence, minimum mandatory sentence = 6 m. at Level V; the first 6 m. of sentence shall not be subject to suspension (7) If convicted of stalking w/in 5 yrs of prior stalking conviction, minimum mandatory sentence = 1 yr at Level V; the first year of sentence shall not be subject to suspension 												

16-4753	<u>Drug dealing – Aggravated Possession:</u> (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity; (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor; (3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title; (4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section 4751C(4)a.-i. of this title; and there is an aggravating factor; or (5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;
16-4757(c)(1)	<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u> (1) A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision or subsection of 4757(a).

Class C Felony (Nonviolent)

II.) (FCN)

Sentence Range (Nonviolent Category) FCN	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 1 yr @ Level V
Acceptance of Responsibility	Up to 9 months @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-503	<u>Criminal Solicitation 1st Degree</u> Solicit to commit Class A Felony + Solicited <18 & D>18/Solicited<15 & D= 3+ yrs older
11-787(b)(1)(C) (b)(2)(A)	<u>Trafficking of persons and involuntary servitude (see note)</u>
11-841(3)(b)	<u>Theft (> \$100,000) (see note)</u>
11-907B(b)	<u>Criminal Impersonation of a Police Officer w/Injury or Felonies (see note)</u>
11-913A(c)(3)	<u>Health Care Fraud (Intended loss>\$100,000/Provider)(see note)</u>
11-917(d)(3)	<u>New Home Construction Fraud (Loss >\$100,000)</u>
11-1458	<u>Removing Firearm from a Law Enforcement Officer</u>
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device >\$99,999.99</u>
16-2513(b)	<u>Conceal/Destroy/Falsify/Forge Document Which Results in False Authorization of Maintenance Medical Treatment for Life Prolongation</u>
31-1003	<u>Benefit by False Representation >\$10,000 (see note)</u>
31-1004(2)	<u>Falsify Reimbursement Report >\$10,000 (see note)</u>
31-1006	<u>Unlawful Conversion of Benefits >\$10,000 (see note)</u>

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 24 months @ Level V
Lack of amenability to lesser sanctions	Up to 24 months @ Level V

Supplemental Notations for Class C Nonviolent Felonies

If crime is a secondary offense, use non-aggravated presumptive.	
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.	
All Criminal fines require 18% surcharge for Victims fund.	
All Drug crimes require additional 15% surcharge for rehabilitation fund	
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.	
Restitution shall be ordered for losses to victim. (Title 11, §4106)	
Costs of prosecution may be ordered. (Title 11, §4204(i))	
11-787 (b)(1)(C) (b)(2)(A)	<u>Trafficking of persons and involuntary servitude</u> <ul style="list-style-type: none"> • (b)(1)(C) by abusing or threatening to abuse the law or legal process which is a class C felony; • (b)(2)(A) sexual servitude of a minor in which the minor was between the ages of 14 and 18 years and which did not involve overt force or threat is a class C felony. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-841(3)(b)	<u>Theft (>\$100,000)</u> 841(d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-907B(b)	<u>Criminal Impersonation of a Police Officer w/Injury or Felonies</u> During the commission of the offense: (1) causes injury to a nonparticipant or (2) commits a Class A or Class B Felony or any sexual offense as defined in Title 11, §761(d)
11-913A(c)(3)	<u>Health Care Fraud (Intended loss>\$100,000/Provider)</u> 913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.
31-1003 31-1004(2) 31-1006	<u>Benefit by False Representation</u> <u>Falsify Reimbursement Report</u> <u>Unlawful Conversion of Benefits</u> <ul style="list-style-type: none"> • 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State • 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

Class D Felony (Violent)

I.) (FDV)

Sentence Range (Violent Category) FDV	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 2 years @ Level V
Acceptance of Responsibility	Up to 18 months @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-607(3)	<u>Strangulation (see note)</u>
11-612	<u>Assault 2nd Degree</u> (a)Intentionally: (1) Serious Injury/ (2)Injury w/DW/ (3) Injures LEO, FF, CO/ (4) Medical personnel/ (5) Vt>62/ (6)Assaults LEO w/spray/ (7)Uses spray commit crime/ Injures State Employee/ (9) Injures Pregnant Female/ (10) Injures Vt< 6 y.o.a. (a)Recklessly: (1) Serious Injury/ (2)Injury w/DW/ (5)Vt>62/ (9) Injures Pregnant Female/ (10) Injures Vt< 6 y.o.a.
11-630	<u>Vehicular Homicide 2nd Degree (see note)</u> (a)(1) Criminally negligent driving: death/ (2) DUI + Negligent driving:death
11-631	<u>Criminally Negligent Homicide</u>
11-769	<u>Unlawful Sexual Contact 1st Degree</u> Causing physical injury/using deadly weapon or threat of
11-775	<u>Bestiality</u>
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778(f)(5)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)</u>
11-778A(d)(1)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u>
11-802	<u>Arson 2nd Degree</u> Intentionally damage unoccupied bldg by fire/explosion
11-825	<u>Burglary 2nd Degree (see note)</u> (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant
11-835(b)(2)	<u>Carjacking 2nd Degree</u> (a)Risk of Death or Serious Injury/(b)Compels Lawful Occupant to Leave/(c) Reckless Operation
11-846	<u>Extortion (Vt>62 y.o.a.)</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1109	<u>Dealing in Child Pornography (see note)</u>
11-1250(c)	<u>Assault 1st Degree on Law Enforcement Animal</u> Intentionally or Recklessly causes Death or Serious Injury
11-1253	<u>Escape After Conviction</u> (Special Escape Category May Apply)(see note)

11-1254(a)	Assault in Detention Facility: Injury (see note)
11-1254(c)	Assault in Detention Facility: Bodily Emissions (see note)
11-1304(b)(3)	Hate Crime (Underlying Offense: Class E Felony)
11-1338	Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive (see note)
11-1442	Carrying Concealed Deadly Weapon (Prior conviction <5 years) (see note)
11-1448(e)(1)	Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)
11-1448(e)(2)	Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)
11-1459	Possession of a Firearm with Altered Serial Number
11-3533	Aggravated Intimidation of Witness &/or Victim (see note)
16-4754	Drug dealing – Aggravated possession; (see note)
31-3913(b)	Exploitation of Infirm Adult (\$10,000 – \$50,000)
31-3913(c)	Abuse of Infirm Adult: Bodily Harm

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 4 yrs @ Level V
Two or more prior felonies	Up to 4 yrs @ Level V
One Prior violent felony	Up to 4 yrs @ Level V
Two or more prior violent felonies	Up to 8 yrs @ Level
Excessive Cruelty	Up to 8 yrs @ Level V

Supplemental Notations for Class D Violent Felonies

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(2) Gang Participation: Conviction for a Class D Felony as a result of gang participation shall be sentenced as a Class C Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-607(3)	Strangulation <ul style="list-style-type: none"> If person used or attempted to use a deadly weapon or dangerous instrument while committing the offense; or The person caused serious physical injury to the other person while committing the offense; or The person has previously been convicted of strangulation
11-630	Vehicular Homicide 2nd Degree <ul style="list-style-type: none"> (b) Mandatory minimum sentence for violation of (a)(2) DUI: 1 yr. which shall not be subject to suspension, probation, parole, furlough, work release or supervised custody during the 1st year. (c) Persons 16 y.o.a. or older, shall be treated as an adult except that mandatory minimum sentence shall not apply & any period of incarceration shall be served at a juvenile facility until 18 y.o.a. at which time the person shall be transferred to an adult facility to continue their sentence

11-777A(e)(2)	<p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <ul style="list-style-type: none"> (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony. 												
11-778(f)(5)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree</u></p> <p>as set forth in subsection (e)(engages in an act of sexual extortion as defined in Section 774 of this chapter, and the victim is <16) is a class D Felony.</p>												
11-778A(d)(1)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</u></p> <p>as set forth in subsection (a)(intentionally has sexual contact with a child <16 or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child) is a class D felony.</p>												
11-825	<p><u>Burglary 2nd Degree</u></p> <ul style="list-style-type: none"> Minimum Mandatory Sentences: (b)(1) 1 yr at Level V or (b)(2) 3 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. (c) Sentencing provisions equally applicable to Attempt Minimum Presumptive Sentences: <table border="1"> <tr> <td>1st Conviction</td><td>12 to 36 m @ Level V</td></tr> <tr> <td>While on Release or pending Trial</td><td>18 to 36 m @ Level V</td></tr> <tr> <td>Two or more prior felonies</td><td>36 to 72 m @ Level V</td></tr> <tr> <td>One Prior Violent Felony</td><td>36 to 72 m @ Level V</td></tr> <tr> <td>Two or more prior violent felonies</td><td>48 to 96 m @ Level V</td></tr> <tr> <td>Excessive cruelty</td><td>48 to 96 m @ Level V</td></tr> </table>	1st Conviction	12 to 36 m @ Level V	While on Release or pending Trial	18 to 36 m @ Level V	Two or more prior felonies	36 to 72 m @ Level V	One Prior Violent Felony	36 to 72 m @ Level V	Two or more prior violent felonies	48 to 96 m @ Level V	Excessive cruelty	48 to 96 m @ Level V
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Excessive cruelty	48 to 96 m @ Level V												
11-1105	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class D felony, the underlying offense must be a class E felony. See page 114 for listing of qualifying underlying offenses for this statute.</p> <p>"Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>												
11-1109	<p><u>Dealing in Child Pornography</u></p> <p>2nd or subsequent conviction shall be guilty of a Class B Felony (Title 11, §1110).</p>												
11-1253	<p><u>Escape After Conviction</u></p> <p>Any sentence imposed shall not run concurrently with any other sentence.</p>												
11-1254(a)	<p><u>Assault in Detention Facility: Injury</u></p> <ul style="list-style-type: none"> Minimum Mandatory Sentence: 2 years at Level V to begin immediately upon sentencing. Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed 												

11-1254(c)	<p><u>Assault in Detention Facility: Bodily Emissions</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence: 1 yr at Level V to begin immediately upon sentencing. • Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. • Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed. • The Defendant shall be tested for communicable diseases and the costs assessed as costs upon conviction. Results are to be communicated to the AG, the Victim, the Defendant and the medical care provider for D.O.C.
11-1338	<p><u>Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive</u></p> <p>Any person over 16 y.o.a. who violates this section shall be charged as an adult.</p>
11-1442	<p><u>Carrying Concealed Deadly Weapon (Prior conviction < 5 yrs)</u></p> <ul style="list-style-type: none"> • T11 1457 (b)(1) & (j)(4): If the violation occurs within a Safe School and Recreation Zone the crime shall be a class D violent felony. • T11 1457 (b)(1) & (j)(5): If the individual is an elementary or secondary school student the student shall be expelled for 180 days.
11-1448(e)(1)	<p><u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u></p> <ul style="list-style-type: none"> • Mandatory Minimum Sentence- (e)(1): 1 yr at Level V if previously convicted of a violent felony or (e)(2): 3 yrs at Level V if offense occurs within 10 yrs of the conviction or incarceration for any violent felony, whichever is later or (e)(3): 5 yrs at Level V if the person has been convicted on 2 or more separate occasions of any violent felony. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable.
11-1448(e)(2)	<p><u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u></p> <ul style="list-style-type: none"> • Mandatory Minimum Sentence- (e)(2): a. 4 yrs at Level V; or b. 6 yrs at Level V, if the person causes such injury or death within 10 yrs of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or c. 10 yrs at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.
11-3533	<p><u>Aggravated Intimidation of Witness &/or Victim</u></p> <p>11-3534: Sentencing provisions equally applicable to Attempt</p>
16-4754	<p><u>Drug dealing – Aggravated possession</u></p> <p>(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;</p> <p>(2) Possesses a controlled substance in a Tier 3 quantity; or</p> <p>(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor</p>

Class D Felony (Nonviolent)

II.) (FDN)

Sentence Range (Nonviolent Category) FDN	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 12 months @ Level II or III
Acceptance of Responsibility	Up to 9 months at Level II or III
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-850(b)(3)	<u>Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices) (see note)</u>
11-854	<u>Identity Theft (see note)</u>
11-932	<u>Unauthorized Computer Access (>\$10,000) (see note)</u>
11-933	<u>Theft Computer Services (>\$10,000) (see note)</u>
11-934	<u>Interruption Computer Services (>\$10,000) (see note)</u>
11-935	<u>Misuse Computer System Information (>\$10,000) (see note)</u>
11-936	<u>Destruction Computer Equipment (>\$10,000) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (>\$10,000) (see note)</u>
11-938	<u>Fail to Cease Electronic Communication (>\$10,000) (see note)</u>
11-939	<u>Computer Offense Penalties (>\$10,000) (see note)</u>
11-951	<u>Money Laundering</u>
11-1223	<u>Perjury 1st Degree</u> Material, False Testimony
11-1457(j)(3)	<u>Poss. Weapon in Safe School/Recreation Zone (Underlying Offense: Class E Fel.) (see note)</u>
11-1448	<u>Poss/Purchase Firearm/Ammunition by Prohibited Person (see note)</u>

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 24 months @ Level V
Lack of amenability to lesser sanctions	Up to 24 months @ Level V

Supplemental Notations for Class D Nonviolent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.	
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.	
All Criminal fines require 18% surcharge for Victims fund.	
All Drug crimes require additional 15% surcharge for rehabilitation fund	
11-616(c)(2) Gang Participation: Conviction for a Class D Felony as a result of gang participation shall be sentenced as a Class C Felony under Title 11, §4205.	
Restitution shall be ordered for losses to victim. (Title 11, §4106)	
Costs of prosecution may be ordered. (Title 11, §4204(i))	
11-850(b)(3)	<u>Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices)</u> <ul style="list-style-type: none"> • (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints • (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8) Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-854	<u>Identity Theft</u> Restitution shall be ordered for monetary loss including documented loss of wages and reasonable attorney's fees
11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	<u>Unauthorized Computer Access</u> <u>Theft Computer Services</u> <u>Interruption Computer Services</u> <u>Misuse Computer System Information</u> <u>Destruction Computer Equipment</u> <u>Unauthorized Electronic Mail</u> <u>Fail to Cease Electronic Communication</u> <u>Computer Offense Penalties</u> <ul style="list-style-type: none"> • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1448 11-1448(a)(5)	<u>Poss/Purchase Firearm/Ammunition by Prohibited Person</u> Nonviolent classification only applies to Poss/Purchase Firearm if no prior violent felony conviction. If prior violent felony conviction, see p.39 for §1448(e). <ul style="list-style-type: none"> • (f)(1) Any juvenile 14 y.o.a or older convicted under (a)(5) shall for a 1st offense, receive a minimum sentence of 6 m. at Level V, or, for a 2nd or subsequent offense, 1 yr of Level V, which shall not be suspended. §§4205(b) and 4215 shall not be applicable to this subsection. • (g) In addition, said juvenile shall be ordered after a first conviction to view a film/slide presentation related to the damage and injury caused by a gun and must meet with a victim or family of a deceased victim of violent crime.
11-1457	<u>Poss. Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Class E Fel.) (j)(3) If the underlying offense is a class e felony the crime shall be a class d felony. (j)(5) An elementary or secondary school student shall be expelled for 180d.

Class E Felony (Violent)

I.) (FEV)

Sentence Range (Violent Category): FEV	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 15 m. @ Level V
Acceptance of Responsibility	Up to 11 months @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-513	<u>Conspiracy 1st Degree</u> Conspires to Commit Class A Felony
11-602(b)	<u>Aggravated Menacing (Display Deadly Weapon)</u>
11-604	<u>Reckless Endangering 1st Degree</u> Conduct likely to cause death
11-607(1)	<u>Strangulation</u>
11-774	<u>Sexual Extortion</u>
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-831	<u>Robbery 2nd Degree</u> (a)Theft w/force to (1) overcome resistance/(2)compel owner's cooperation
11-835	<u>Carjacking 2nd Degree</u> Intentional Theft Occupied Motor Vehicle by Coercion/Duress
11-846	<u>Extortion</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1304(b)(3)	<u>Hate Crime (Underlying Offense: Class F Felony)</u>
11-1339	<u>Adulteration (Injury/Illness)</u>
11-1444	<u>Possess Destructive Weapon (see note)</u>
11-1445(5)	<u>Unlawful Dealing with Dangerous Weapon</u> Enabling Felony/Class A Misdemeanor/Drug Crime
16-4755	<u>Aggravated possession</u> Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i.
16-4774(c)	<u>Delivery Drug Paraphernalia to Minor</u>
31-3913(b)	<u>Exploitation of Infirm Adult (>\$5,000/<\$10,000)</u>

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 30 m. @ Level V
Two or more prior felonies	Up to 30 m. @ Level V
One prior violent felony	Up to 30 m. @ Level V
Two or more prior violent felonies	Up to 5 yrs @ Level V

Supplemental Notations For Class E Violent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-777A(e)(2)	<p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <ul style="list-style-type: none"> (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-1105	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class E felony the underlying offense must be a class F felony. See page 114 for listing of qualifying underlying offenses for this statute.</p> <p>"Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>
11-1444	<p><u>Possess Destructive Weapon</u></p> <ul style="list-style-type: none"> 11-1457(b)(1&2)&(j)(4): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class D Violent Felony. 11-1457(j)(5): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.

Class E Felony (Nonviolent)

II.) (FEN)

Sentence Range (Nonviolent Category) FEN	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-503	<u>Criminal Solicitation 1st Degree</u> Solicit to commit Class A Felony
11-780	<u>Female Genital Mutilation</u>
11-787(b)(1)(D),c	<u>Trafficking of persons and involuntary servitude (see note)</u>
11-841B(c)	<u>Theft: Organized Retail Crime: class A misd; class E felony (see note)</u>
11-841(c)(3)(a)	<u>Theft (\$50,000– \$99,999) (see note)</u>
11-876	<u>Tamper w/ Public Record 1st Degree</u> With Intent to Defraud
11-907B	<u>Criminal Impersonation Police Officer</u>
11-913A(c)(2)	<u>Health Care Fraud (see note)</u> Intended loss= \$50,000– \$99,999/ Pattern of Claims When Offender is Provider
11-926(d)(3)	<u>Trademark Counterfeiting (2+Conv/Mfr/>1,000/>\$10,000+) (7/7/05)</u>
11-932	<u>Unauthorized Computer Access (\$5,000–\$9,999) (see note)</u>
11-933	<u>Theft Computer Services (\$5,000–\$9,999) (see note)</u>
11-934	<u>Interruption Computer Services (\$5,000–\$9,999) (see note)</u>
11-935	<u>Misuse Computer System Information (\$5,000–\$9,999) (see note)</u>
11-936	<u>Destruction Computer Equipment (\$5,000–\$9,999) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (\$5,000–\$9,999) (see note)</u>
11-938	<u>Fail to Cease Electronic Communication (\$5,000–\$9,999) (see note)</u>
11-939	<u>Computer Offense Penalties (\$5,000–\$9,999) (see note)</u>
11-1100	<u>Dealing in Children</u>
11-1101	<u>Abandonment of Child (<than 14 yrs of age)</u>
11-1102(b)(1)	<u>Endanger Welfare of Child: Death</u>
11-1201	<u>Bribery of a Public Servant</u>
11-1203	<u>Receiving a Bribe by a Public Servant</u>
11-1239	<u>Wearing Disguise during Felony</u>
11-1248	<u>Obstruct Rabies Control during Emergency</u>
11-1261	<u>Bribery of a Witness</u>
11-1262	<u>Receiving a Bribe by a Witness</u>
11-1263	<u>Tamper with a Witness</u>

11-1263A(a)(2)	<u>Interfere with Child Witness</u> Fail to Produce
11-1263A(a)(3)(b)	<u>Interfere with Child Witness</u> Bribes Another: Fail to Produce
11-1263A(a)(4)(b)	<u>Interfere with Child Witness</u> Threaten Another: Fail to Produce
11-1264	<u>Bribery of a Juror</u>
11-1265	<u>Receiving a Bribe by a Juror</u>
11-1326(a)	<u>Animals; fighting and baiting (see note)</u>
11-1327(c)(1)	<u>Dangerous Animal: Death of Person</u>
11-1352	<u>Promoting Prostitution 2nd Degree</u> (1)Manages or Owns Business w/2+ prostitutes/ (2)Profits by prostitute < 18 y.o.a
11-1361	<u>Providing Obscenity to Minor (see note)</u>
11-1457(j)(3)	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony) (see note)</u>
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device >50,000<100,000</u>
11-3532	<u>Intimidation of a Witness &/or Victim</u>
16-4758	<u>Unlawful dealing in a counterfeit or purported controlled substance</u>
31-610(a)(1)	<u>Transfer/Alter/Possess Food Stamps (\$500>) (see note)</u>
31-1003	<u>False Representation for Benefits (\$500–\$9,999) (see note)</u>
31-1004(2)	<u>Falsify Reimbursement Report (\$500–\$9,999) (see note)</u>
31-1004(3)	<u>Misrepresentation to Qualify as Provider (see note)</u>
31-1004(4)	<u>Misrepresentation as to Operation of Provider/Facility (see note)</u>
31-1005	<u>Kickback Schemes (see note)</u>
31-1006	<u>Unlawful Conversion of Benefits (\$500–\$9,999) (see note)</u>

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 15 m. @ Level V
Lack of amenability to lesser sanctions	Up to 15 m. @ Level V

Supplemental Notations for Class E Nonviolent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-787 (b) (1) (D), c	<p><u>Trafficking of persons and involuntary servitude</u></p> <ul style="list-style-type: none"> • (b)(1)(D) by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person which is a class E felony; • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-841B(c)	<p><u>Theft: Organized Retail Crime; class A misdemeanor; class E felony</u></p> <p>In addition to the provisions of Section 841(c) and (d) of this chapter, if a defendant has two or more times been convicted of Theft: Organized Retail Crime, the offense of Theft: Organized Retail Crime is a class E felony.</p>
11-841(c)(3)(a)	<p><u>Theft (\$50,000–\$99,999)</u></p> <p>Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.</p>
11-913A(c)(2)	<p><u>Health Care Fraud</u></p> <p>(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.</p>
11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	<p><u>Unauthorized Computer Access</u></p> <p><u>Theft Computer Services</u></p> <p><u>Interruption Computer Services</u></p> <p><u>Misuse Computer System Information</u></p> <p><u>Destruction Computer Equipment</u></p> <p><u>Unauthorized Electronic Mail</u></p> <p><u>Fail to Cease Electronic Communication</u></p> <p><u>Computer Offense Penalties</u></p> <ul style="list-style-type: none"> • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1326(a)	<p><u>Animals; fighting and baiting</u></p> <ul style="list-style-type: none"> • All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be disposed of in a humane manner. • A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.
11-1361	<p><u>Providing Obscenity to Minor</u></p> <ul style="list-style-type: none"> • If the obscenity involved live conduct, the business or establishment shall be closed for 6 m. • (c) Minimum mandatory sentence for 2nd or subsequent conviction within 5 yrs.: (1) \$5,000 fine (\$10,000 if the Defendant is an organization), (2) imprisonment for a minimum of 9 m. which shall not be suspended or reduced, (3) probation for 2 yrs. and (4) the establishment shall be closed for 2 yrs.

11-1457	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony)</u> (j)(4) An elementary or secondary school student shall be expelled for 180d.
31-610(a)(1)	<u>Transfer/Alter/Possess Food Stamps (\$500>)</u> May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act
31-1003 31-1004(2) 31-1004(3) 31-1004(4) 31-1005 31-1006	<u>Benefit by False Representation</u> <u>Falsify Reimbursement Report</u> <u>Misrepresentation to Qualify as Provider</u> <u>Misrepresentation as to Operation of Provider/Facility</u> <u>Kickback Schemes</u> <u>Unlawful Conversion of Benefits</u> <ul style="list-style-type: none"> 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

Class F Felony (Violent)

I.) (FFV)

Sentence Range (Violent Category): FFV	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 9 m. @ Level V
Acceptance of Responsibility	Up to 7 months at Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-617(b)(2)	<u>Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06)</u>
11-629	<u>Vehicular Assault 1st Degree</u> DUI & criminally negligent driving: Serious Injury
11-645	<u>Promoting Suicide</u>
11-768	<u>Unlawful Sexual Contact 2nd Degree</u> Vt<16 y.o.a.
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778A(d)(2)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1256	<u>Promoting Prison Contraband</u> Deadly Weapon, mobile phone, cellular phone or other prohibited electronic device
11-1302	<u>Riot</u>
11-1304(b)(3)	<u>Hate Crime (Underlying Offense: Class G Felony)</u>
11-1312	<u>Stalking (see note)</u> Causing Fear/Defendant=21+ y.o.a. & Vt= <14 y.o.a., def. viol. N.c. ord. w/vic, or vic >62, or thrt of death or serious phys. inj. to vic. or another person, serious phys. inj. to vic.
16-4756	<u>Aggravated Possession</u> A person who possesses a controlled substance in a Tier 1 quantity
16-4761(d)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who delivers or intends to deliver prescription drug and there is an aggravator

Sentences for Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 18 Months @ Level V
Two or more prior felonies	Up to 18 months @ Level V
One prior violent felony	Up to 18 Months @ Level V
Two or more prior violent felonies	Up to 36 Months @ Level V

Supplemental Notations for Class F Violent Felonies:

<p>If crime is a secondary offense, use the non-aggravated presumptive.</p> <p>All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.</p> <p>All Criminal fines require 18% surcharge for Victims fund.</p> <p>All Drug crimes require additional 15% surcharge for rehabilitation fund</p> <p>Restitution shall be ordered for losses to victim. (Title 11, §4106)</p> <p>Costs of prosecution may be ordered. (Title 11, §4204(i))</p>	
11-777A(e)(2)	<p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <ul style="list-style-type: none"> (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-778A(d)(2)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree:</u></p> <p>as set forth in subsection (b)(1)(Is a male who intentionally exposes his genitals or buttocks to a child who <16 under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child): or (2)(Is a female who intentionally exposes her genitals, breast or buttocks to a child <16 under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.) is a class F felony.</p>
11-1105	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class F felony, the underlying offense must be a class G felony. See page 114 for listing of qualifying underlying offenses for this statute.</p> <p>"Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>
11-1312	<p><u>Stalking</u></p> <ul style="list-style-type: none"> (6) If act(s) has been previously prohibited by court order or sentence, minimum mandatory sentence = 6 m. at Level V; the first 6 m. of sentence shall not be subject to suspension (7) If convicted of stalking w/in 5 yrs of prior stalking conviction, minimum mandatory sentence = 1 yr at Level V; the first year of sentence shall not be subject to suspension

Class F Felony (Nonviolent)

II.) (FFN)

Sentence Range (Nonviolent Category) FFN	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 12 m. for Title 11 offenses; up to 18 months for Title 16 offenses @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II for Title 11 offenses Up to 14 months @ Level II for Title 16 offenses
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-502	<u>Criminal Solicitation 2nd Degree (see note)</u> Solicit to commit Felony
11-621(a)(2)	<u>Terroristic Threat (see note)</u> False Stmt likely to: (a)evacuation/ (b)serious inconvenience/ (c)terror + School or Care Facility
11-621(a)(3)	<u>Terroristic Threat (see note)</u> Intent to Cause Belief of Substance Exposure: Death/Serious Injury
11-622	<u>Hoax Device</u>
11-651	<u>Abortion</u>
11-787(b)(1)(E) c	<u>Trafficking of persons and involuntary servitude (see note)</u>
11-824	<u>Burglary 3rd Degree (see note)</u> Building
11-828	<u>Possess Burglary Tools</u>
11-840A	<u>Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/ \$1,500+)</u>
11-841(c)(2)	<u>Theft (see note)</u> \$1500+/vt= 62+ y.o.a./Infirm/Disabled
11-841C(b)	<u>Theft: Theft of a blank prescription form or pad</u>
11-850(b)(2)	<u>Unlawful Telecommunication Device (Previous Conviction/ 10-49 Devices)</u>
11-860	<u>Possess Shoplifters Tools</u>
11-861(b)(1)	<u>Forgery 1st Degree (see note)</u> Money/Stamps/Stocks/Bonds etc.
11-903	<u>Unlawful Use Credit Card</u> Vt= 62+ y.o.a & >\$1,500
11-917(d)(2)	<u>New Home Construction Fraud</u> Loss= \$50,000–\$99,999
11-922(c)	<u>Improper Labeling (PriorConv 100>) (see note) (7/10/06)</u>
11-932	<u>Unauthorized Computer Access (\$1,000–\$4,999) (see note)</u>
11-933	<u>Theft Computer Services (\$1,000–\$4,999) (see note)</u>
11-934	<u>Interruption Computer Services (\$1,000–\$4,999) (see note)</u>

11-935	<u>Misuse Computer System Information (\$1,000–\$4,999) (see note)</u>
11-936	<u>Destruction Computer Equipment (\$1,000–\$4,999) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (\$1,000–\$4,999) (see note)</u>
11-938	<u>Fail Cease Electronic Communication (\$1,000–\$4,999) (see note)</u>
11-939	<u>Computer Offense Penalties (\$1,000–\$4,999) (see note)</u>
11-1101	<u>Abandonment of Child (14 yrs of age or older)</u>
11-1111	<u>Possession of Child Pornography</u>
11-1112(a)(2)	<u>Sex Offender (Loiter w/in 500 ft School)</u>
11-1222	<u>Perjury 2nd Degree</u> Written, Material False Stmt Intended to Mislead Public Servant
11-1263A(a)(1)	<u>Interfere with Child Witness</u> Complainant removed from jurisdiction
11-1263A(a)(3)(a)	<u>Interfere with Child Witness</u> Bribe to cause Complainant's removal from jurisdiction
11-1263A(a)(4)(a)	<u>Interfere with Child Witness</u> Threat to cause Complainant's removal from jurisdiction
11-1271A(b)(c)	<u>Crim. Contempt Dom Violence Pro. Order (PFA) (see note)</u>
11-1303(3)(b)	<u>Disorderly Conduct: Funeral/Memorial Service (Prior Conv) (6/1/06)</u>
11-1325	<u>Cruelty to Animals (see note)</u> Cruelly or Unnecessarily kills or seriously injures under (b)(4) or (5)
11-1326(b)(c)	<u>Fighting/Baiting Animals (see note)</u>
11-1327(c)(2)	<u>Dangerous Animal: Serious Injury to Person</u>
11-1351	<u>Promoting Prostitution 3rd Degree</u> Profit from prostitution
11-1448	<u>Poss/Purchase Deadly Weapon (Other than Destructive Weapon/Firearm/Ammunition) by Prohibited Person (see note)</u>
11-1450	<u>Receiving Stolen Firearm</u>
11-1451	<u>Theft of firearm</u>
11-1454	<u>Giving Firearm to Person Prohibited</u>
11-1455	<u>Firearm Transaction on Behalf of Another (1st Offense)</u>
11-1457(j)(3)	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony) (see note)</u>
16-4757(b)	<u>Miscellaneous Drug Crimes (see note)</u>
16-4759(b)(1,2,4)	<u>Registrant Crimes</u> Violates (a)(1), (a)(2), or (a)(4)
16-4760	<u>Maintaining a Drug Property</u>
21-4134(d)	<u>Operation of vehicles on approach of authorized emergency vehicles</u>

Standard Sentences for Prior Criminal History Categories	
Repetitive criminal history	Up to 9 m. @ Level V
Lack of amenability at lesser sanctions	Up to 9 m. @ Level V

Supplemental Notations for Class F Nonviolent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-502	<u>Criminal Solicitation 2nd Degree</u> Class F Felony unless the solicitor is 18 y.o.a. or older and the solicited is >18 y.o.a. or unless the solicitor is more than 3 yrs older than the solicited, who is less than 15 y.o.a. in which case, this crime is a Class D Felony.
11-621(a)(2)	<u>Terroristic Threat</u> <ul style="list-style-type: none"> • (c)(1) Mandatory fine: \$1,000–\$2,500 which cannot be suspended and a minimum of 100 hrs community service • If the defendant is 17 y.o.a. or > & it is a first offense = Class A Misd
11-621(a)(3)	<u>Terroristic Threat</u> (d) Mandatory fine: \$2,000 which shall not be suspended
11-787(b)(1)(E), c	<u>Trafficking of persons and involuntary servitude</u> <ul style="list-style-type: none"> • (b)(1)(E) by using blackmail, or using or threatening to cause financial harm to, or by using financial control over any person which is a class F felony. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-824	<u>Burglary 3rd Degree</u> Presumptive sentences: First Conviction – Quasi Incarceration (Level IV) for 3 Mo. Repetitive Criminal History – Level V for 3 to 12 Mo. Lack of amenability to Lesser Sanction – Level V for 3 to 12 Mo.
11-841(c)(2)	<u>Theft</u> Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-850(b)(2)	<u>Unlawful Telecommunication Device</u> <ul style="list-style-type: none"> • (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8) Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-861	<u>Forgery 1st Degree</u> (c) Restitution for resultant losses to all parties.
11-922(c)	<u>Improper Labeling (PriorConv 100 >)</u> 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.

11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	<p><u>Unauthorized Computer Access</u></p> <p><u>Theft Computer Services</u></p> <p><u>Interruption Computer Services</u></p> <p><u>Misuse Computer System Information</u></p> <p><u>Destruction Computer Equipment</u></p> <p><u>Unauthorized Electronic Mail</u></p> <p><u>Fail to Cease Electronic Communication</u></p> <p><u>Computer Offense Penalties</u></p> <ul style="list-style-type: none"> • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1271A(b)(c)	<p><u>Criminal Contempt of a Domestic Violence Protection Order (PFA)</u></p> <ul style="list-style-type: none"> • (b) Unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony. • (c) A person is guilty of felony criminal contempt of a domestic violence protection order if: <ol style="list-style-type: none"> 1. Such contempt resulted in physical injury; or 2. Such contempt involved use/threat use/weapon
11-1325	<p><u>Cruelty to Animals</u></p> <p>(d) The Defendant shall not own or possess any animal for 15 yrs following conviction (but see exceptions). Violation of this condition is punishable by a mandatory \$5,000 fine and forfeiture of the animal.</p>
11-1326(b)(c)	<p><u>Fighting/Baiting Animals</u></p> <ul style="list-style-type: none"> • (c) All animals, equipment, and money shall be forfeited to the State. Animals shall be humanely disposed of. • (e) The Defendant shall not own or possess any animal for 15 yrs following conviction.
11-1448 11-1448(a)(5)	<p><u>Poss/Purchase Deadly Weapon by Prohibited Person</u></p> <ul style="list-style-type: none"> • 11-1457(b)(4)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class E Felony. • 11-1457(j)(4): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d. • See pg. 39, §1448(e) for Destructive Weapon/Firearm w/Prior Violent Felony Conviction • See pg. 42, §1448 for Firearm/Ammunition (No prior violent felony conviction) • Poss Destructive Weapon (No Prior Conviction) should be filed under §1338 • (f)(1) Any juvenile 14 y.o.a or older convicted under (a)(5) shall for a 1st offense, receive a minimum sentence of 6 m. at Level V, or, for a 2nd or subsequent offense, 1 yr of Level V, which shall not be suspended. §§4205(b) and 4215 shall not be applicable to this subsection. • (g) In addition, said juvenile shall be ordered after a first conviction to view a film/slide presentation related to the damage and injury caused by a gun and must meet with a victim or family of a deceased victim of violent crime.
11-1457	<p><u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony)</u></p> <p>(j)(4) An elementary or secondary school student shall be expelled for 180d.</p>

16-4757(b)	<p><u>Miscellaneous Drug Crimes 16-4757(a)</u></p> <p>(1)To distribute as a registrant controlled substance classified in Schedule I or II except pursuant to an order form as required by Section 4738 of this chapter;</p> <p>(2)To use in the course of manufacture, distribution, prescribing, dispensing, or research of a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;</p> <p>(3)To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;</p> <p>(4)To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;</p> <p>(5)To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;</p> <p>(6)To acquire or attempt to or obtain possession of a controlled substance by theft;</p> <p>(7)To prescribe, or administer to another, any anabolic steroid, as defined in Section 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.</p>
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Class G Felony (Violent)

I.) (FGV)

Sentence Range (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 6 m. @ Level V For 16-4767 & 16-4768: 3 to 9 m. @ Level V
Acceptance of Responsibility	Up to 4 months @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-614	<u>Abuse of Sports Official (Prior Conv) (see note)</u>
11-617(b)(1)	<u>Criminal Youth Gang: Recruitment (7/10/06)</u>
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778A(d)(3)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree (see note)</u>
11-782	<u>Unlawful Imprisonment 1st Degree</u> Risk of Serious Injury
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1304(b)(2)	<u>Hate Crime (Underlying Offense: Class A, B or C Misdemeanor)</u>
11-1312(a)	<u>Stalking</u>
11-1442	<u>Carrying Concealed Deadly Weapon (Prior conviction >5 yrs) (see note)</u>
11-1445(4)	<u>Unlawfully Dealing with a Dangerous Weapon</u>
16-1136(a)	<u>Abuse/Neglect of Patient: Sexual Contact</u>
16-1136(b)	<u>Exploit Patient's Resources (\$1000+)</u>
16-4761(c)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
16-4774(b)	<u>Drug paraphernalia</u> Manufacture and sale
31-3913(b)	<u>Exploitation of Infirm Adult (\$500- \$4,999)</u>

Sentences for Prior Criminal History Categories	
While on release or pending trial or sentence	Up to 12 months @ Level V
Two or more prior felonies	Up to 12 months @ Level V
One prior violent felony	Up to 12 months @ Level V
Two or more prior violent felonies	Up to 24 months @ Level V

Supplemental Notations for Class G Violent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.	
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.	
All criminal fines require 18% surcharge for Victims fund	
All Drug crimes require additional 15% surcharge for rehabilitation fund	
Restitution shall be ordered for losses to victim. (Title 11, §4106)	
Costs of prosecution may be ordered. (Title 11, §4204(i))	
11-614	<u>Abuse of Sports Official (Prior Conv)</u> Mandatory Penalty: fine=>\$1,000/<\$2,350 & prohibition from participation/attending an organized sporting event for >3 m./<12 m.
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> (e)(1) If the underlying sexual offense is a Class C, D, E, F, or G, felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-778A(d)(3)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</u> as set forth in subsection (c)(Suggests, solicits, requests, commands, importunes or otherwise attempts to induce a child <16 to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.) is a class G felony.
11-1105	<u>Crime Against a Vulnerable Adult</u> For this offense to be a class G felony, the underlying offense must be a class A misdemeanor. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older, who by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult includes any adult for whom a guardian or the person or property has been appointed.
11-1442	<u>Carrying Concealed Deadly Weapon</u> <ul style="list-style-type: none"> Prior conviction > 5 yrs) 11-1457(b)(1)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class F Violent Felony. 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.

Class G Felony (Nonviolent)

II.) (FGN)

Sentence Range (Nonviolent Category) FGN	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-512	<u>Conspiracy 2nd Degree</u> Conspires to commit Felony
11-621(a)(1)	<u>Terroristic Threat (Vt= 62+ y.o.a.) (see note)</u>
11-621(a)(2)	<u>Terroristic Threat (see note)</u> False Stmt likely to cause: (a) evacuation/ (b) serious inconvenience/ (c) terror
11-626	<u>Unlawful Administration Controlled Substance/Narcotic</u>
11-785	<u>Interfere w/Custody</u> Removal from State
11-801	<u>Arson 3rd Degree</u> Recklessly damage unoccupied bldg by fire/explosion
11-804	<u>Reckless Burning (\$1500+ Damage)</u>
11-811(b)(1)	<u>Criminal Mischief (\$5000+ Loss/Substantial Interruption) (see note)</u>
11-812(a)(2)	<u>Graffiti and Possession of Graffiti Implements (\$1500+ damage) (see note)</u>
11-840	<u>Shoplift (\$1500+)</u>
11-841	<u>Theft (see note) \$1500+</u>
11-841A	<u>Theft: Motor Vehicle (6/20/06)</u>
11-841C(a)	<u>Possession of a blank prescription form or pad</u>
11-848	<u>Misapplication of Property (\$1500+)</u>
11-849	<u>Theft of Rental Property (\$1500+)</u>
11-851	<u>Receive Stolen Property (\$1500+/2 prior convictions)</u>
11-852A	<u>Selling Stolen Property; class G felony (see note)</u>
11-859	<u>Larceny of Livestock (see note)</u>
11-861(b)(2)	<u>Forgery 2nd Degree (see note)</u> Deed/Will/Commercial Instrument/Public Record/Tokens/Prescriptions
11-862	<u>Possess Forgery Devices</u>
11-878	<u>Issue False Certificate</u>
11-900	<u>Issue Bad Check (\$1500+)</u>
11-903	<u>Unlawful Use Credit Card</u> Vt= 62+ y.o.a or >\$1,000
11-907A	<u>Criminal Impersonation (Accident Related) (see note)</u>

11-908	<u>Unlawful Concealing Will</u>
11-911	<u>Fraudulent Conveyance of Public Lands</u>
11-912	<u>Fraudulent Receipt of Public Lands</u>
11-913	<u>Insurance Fraud</u>
11-913A	<u>Health Care Fraud (see note)</u>
11-916	<u>Home Improvement Fraud</u> \$1500+/-vt=62+y.o.a./Prior Conviction
11-917(d)(1)	<u>New Home Construction Fraud (\$1,500–\$49,999)</u>
11-920	<u>Transfer of Recorded Sounds</u>
11-922(b)	<u>Improper Labeling (1st Offense 100 >) (see note) (7/10/06)</u>
11-926(d)(2)	<u>Trademark Counterfeiting(PriorConv/100-999/\$2,000–\$9,999) (7/7/05)</u>
11-932	<u>Unauthorized Computer Access (\$500–\$999) (see note)</u>
11-933	<u>Theft Computer Services (\$500–\$999) (see note)</u>
11-934	<u>Interruption Computer Services (\$500–\$999) (see note)</u>
11-935	<u>Misuse Computer System Information (\$500–\$999) (see note)</u>
11-936	<u>Destruction Computer Equipment (\$500–\$999) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (\$500–\$999) (see note)</u>
11-938	<u>Fail Cease Electronic Communication (\$500–\$999) (see note)</u>
11-939	<u>Computer Offense Penalties (\$500–\$999) (see note)</u>
11-951(f)	<u>Money Laundering</u>
11-1001	<u>Bigamy</u>
11-1102(b)(2)	<u>Endanger Welfare of Child: Serious Injury</u>
11-1102(b)(3)	<u>Endanger Welfare of Child: Sex Offense</u>
11-1112(a)(1)	<u>Sex Offender (Residing w/in 500 ft of School)</u>
11-1113	<u>Aggravated Criminal Non-Support (see note)</u> Prior Conviction/ Delinquent as to Full Amt/ \$10,000+
11-1114A(c)	<u>Tongue Splitting (Prior conviction)</u>
11-1206	<u>Receiving Unlawful Gratuity (value > \$1,000)</u>
11-1240	<u>Terroristic Threat to Public Officials/Servants</u>
11-1244(b)	<u>Hinder Prosecution of a Felony</u>
11-1245	<u>False Report Incident/Child Abduction (Prior Conv) (see note) (6/30/05)</u>
11-1249	<u>Abetting Driver's License Violation (Prior Conviction/Death)</u>
11-1252	<u>Escape 2nd Degree</u> (Special Escape Category May Apply) Escape from detention facility or custody of DHSS or DOC
11-1257(a)	<u>Resisting Arrest With Violence (6/27/06)</u>
11-1257A	<u>Use Animal to Avoid Capture</u> Prevent Prosecution/Injures L.E.O
11-1259	<u>Sexual Relations in Detention Facility</u>
11-1260	<u>Misuse of Prisoner Mail (Prior Conviction)</u>
11-1263A(a)(1)	<u>Interfere with Child Witness</u> Removal from Jurisdiction
11-1263A(a)(3)(a)	<u>Interfere with Child Witness</u> Bribes to Cause Removal from Jurisdiction
11-1263A(a)(4)(a)	<u>Interfere with Child Witness</u> Threatens to Cause Removal from Jurisdiction
11-1269	<u>Tampering with Physical Evidence</u>
11-1312	<u>Aggravated Harassment</u> Only applies to offenses prior to 11/1/08; statute repealed, now only Harassment
11-1312	<u>Stalking (see note)</u>
11-1326(b)	<u>Fighting/Baiting Animals (see note)</u> Knowledge and Presence during Preparation

11-1335(a)(6)-(7)	<u>Violation of Privacy</u> Prurient Recording w/out Consent
11-1339	<u>Adulteration</u>
11-1361	<u>Obscenity (see note)</u>
11-1442	<u>Carry Concealed Deadly Weapon (1st conviction)</u>
11-1446A	<u>Undetectable Knives (Mfr/Import/Sell/Possess) (6/30/06)</u>
11-1448A(l)	<u>Firearm Sale Violation: False Statement/Information</u>
11-1448A(m)	<u>Firearm Sale Violation (Second Offense)</u>
11-1471(a)(b)(d)(e)(l)	Video Lottery Cheat Device (Prior Conviction w/in 3 yrs)
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device >\$1500<\$50000</u>
11-2109(c)(1)	<u>Breach of Conditions of Bail (see note)</u>
11-2113(c)(1)	<u>Breach of Release Conditions (Felony/Prior Conviction Crime) (see note)</u>
11-4120(k)	<u>Sex Offender (Fail to Register)</u>
11-4121(t)	<u>Sex Offender (Fail to Comply with Registration Mandates)</u>
11-8562(b)	<u>Provide False Child Abuser Information</u>
16-3111(a)	<u>Crimes Regarding Vital Records (see note)</u>
16-4762(d)	<u>Hypodermic syringe or needle; delivering or possessing; disposal</u>

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 6 m. @ Level V
Lack of Amenability to Lesser Sanctions	Up to 6 m. @ Level V

Supplemental Notations for Class G Nonviolent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-621(a)(1) 11-621(a)(2)	<u>Terroristic Threat (Vt= 62+ y.o.a.)</u> <u>Terroristic Threat</u> <ul style="list-style-type: none"> (c)(1) Mandatory fine: \$1,000–\$2,500 which cannot be suspended and a minimum of 100 hrs community service If the defendant is 17 y.o.a. or younger, the offense is a Class A Misdemeanor
11-811(b)(4)	<u>Criminal Mischief</u> <ul style="list-style-type: none"> If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9), the court shall impose a minimum mandatory fine of at least \$500.

11-812(a)(2)	<u>Graffiti and Possession of Graffiti Implements</u> The penalty for graffiti shall include a minimum fine of not less than \$1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).
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11-841	<u>Theft</u> (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-852A	<u>Selling Stolen Property</u> value of the resold property is \$1,000 or more, or unless the seller has been convicted 2 or more times of Selling Stolen Property
11-859	<u>Larceny of Livestock</u> Minimum sentence of imprisonment, if any, not subject to suspension,, probation or parole during 1st 6 m.
11-861(b)(2)	<u>Forgery 2nd Degree</u> (c) Restitution for resultant losses to all parties.
11-907A	<u>Criminal Impersonation (Accident Related)</u> (1) If Defendant pretended to be someone other than the driver, upon conviction, driving privileges are to be suspended by DMV for 2 yrs.
11-913A	<u>Health Care Fraud</u> 913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.
11-922(b)	<u>Improper Labeling (1st Offense 100 >)</u> 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.
11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	<u>Unauthorized Computer Access</u> <u>Theft Computer Services</u> <u>Interruption Computer Services</u> <u>Misuse Computer System Information</u> <u>Destruction Computer Equipment</u> <u>Unauthorized Electronic Mail</u> <u>Fail to Cease Electronic Communication</u> <u>Computer Offense Penalties</u> <ul style="list-style-type: none"> • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1113	<u>Aggravated Criminal Non-Support</u> <ul style="list-style-type: none"> • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1245	<u>False Report Incident/Child Abduction (Prior Conviction)</u> Minimum Mandatory sentence: Fine= \$500 or for (3)(d): \$1,000, which cannot be suspended + 100 hrs community service + reimbursement to the State/government agency for costs of investigation and/or response
11-1312	<u>Stalking</u> <ul style="list-style-type: none"> • (6) If act or acts include conduct which has previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V which shall not be subject to suspension. • (7) Any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V which shall not be subject to suspension.
11-1326	<u>Fighting/Baiting Animals. (c)</u> All animals, equipment, devices, and money shall be forfeited to the State. Forfeited animals shall be disposed of humanely.

11-1361	<u>Obscenity</u> <ul style="list-style-type: none"> • If the obscenity involved live conduct, the business or establishment shall be closed for 6 m. • (c) Minimum mandatory sentence for 2nd or subsequent conviction within 5 yrs.: (1) \$5,000 fine (\$10,000 if the Defendant is an organization), (2) imprisonment for a minimum of 9 m. which shall not be suspended or reduced, (3) probation for 2 yrs. and (4) the establishment shall be closed for 2 yrs.
11-1442	<u>Carrying Concealed Deadly Weapon (1st conviction)</u> <ul style="list-style-type: none"> • 11-1457(b)(1)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class F NonViolent Felony. • 11-1457(j)(4): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1472	<u>Video Lottery Cheat Device</u> Any instrumental materials shall be forfeited to the Delaware State Police, including but not limited to vehicles used for storage.
11-2109(c)(1)	<u>Breach of Conditions of Bail</u> Maximum Penalty: Imprisonment = <5yrs &/or Fine = <\$5,000
11-2113(c)(1)	<u>Breach of Release Conditions</u> (Felony/Prior Conviction Crime). Maximum Penalty: Imprisonment= <5yrs &/or Fine= <\$5,000
16-3111(a)	<u>Crimes Regarding Vital Records</u> Maximum Penalty: Imprisonment= 5 yrs or less; Fine= \$10,000

Class A Misdemeanors

I.) Violent (MA1)

Sentence Range (Violent Category) MA1	
Statutory Range	0 to 1 yr @ Level V and up to \$2,300 Fine
Presumptive Sentence	1st offense: Up to 12 m. @ Level II 2nd offense w/in 2 yrs: Up to 6 m. @ Level III & Up to 6 m. @ Level II 3rd offense w/in 5 yrs: Up to 3 m. @ Level V & Up to 9 m @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II

Crimes in Category

11-603	<u>Reckless Endangering 2nd Degree</u> (Special DV Category May Apply) Refer to Pg. 105
11-611	<u>Assault 3rd Degree</u> (Special DV Category May Apply) Refer to Pg. 105
11-614	<u>Abuse of Sports Official (1st Offense)</u> Refer to Pg. 105
11-621(a)(1)	<u>Terroristic Threatening</u> (Special DV Category May Apply) Refer to Pg. 105
11-766	<u>Incest</u> (Special DV Category May Apply) Refer to Pg. 105
11-767	<u>Unlawful Sexual Contact 3rd Degree</u> (Special DV Category May Apply) Refer to Pg. 105
11-777A(e)(1)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1250(b)	<u>Assault 2d Degree Against Law enforcement Animal</u> Reckless: Risk of injury
11-1271A	<u>Criminal Contempt: DV Protective Order</u> (Special DV Category May Apply) (see note) Refer to Pg. 105
11-1304(b)(1)	<u>Hate Crime</u> (Underlying Offense: Violation or Unclassified Misdemeanor)
11-1443	<u>Carrying Concealed Dangerous Instrument</u>
16-1136(a)	<u>Abuse/Neglect of Patient in Residential Facility</u>
31-3913(a)	<u>Abuse/Neglect of Infirm Adult</u>

Supplemental Notations Violent Class A Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-777A(e)(1)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> (e)(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class c felony.
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11-1105	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class A misdemeanor the underlying offense must be a class B misdemeanor. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>
11-1271A	<p><u>Criminal Contempt of a Dom Viol Protection Order</u></p> <p>Class A Misd, Class F felony</p> <ul style="list-style-type: none"> • (c) Mandatory minimum sentence of 15 days imprisonment if contempt resulted in: (1) injury, (2) threat of Deadly Weapon or (3) 2 prior convictions this section • (d) Minimum sentence shall not be subject to suspension, probation, parole, furlough, or suspended custody

Class A Misdemeanors

II.) Escape (MA2)

Sentence Range (Escape Category) MA2	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	Up to 3 m. in quasi-incarceration (Level IV) Recommended Maximum: Up to 1 m. @ Level V
Acceptance of Responsibility	Up to 2 months @ Level IV

Crimes in Category

11-1251	<u>Escape 3rd Degree</u> (Special Escape Category May Apply) Escape from custody including nonsecure facilities of DYRS
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Supplemental Notations for Class A Misdemeanors (Escape):

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

Class A Misdemeanors

III.) Property (MA3)

Sentence Range (Property Category) MA3	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense: Up to 12 m. @ Level I 2nd w/in 18 m: Up to 6 m. @ Level II 3rd w/in 3 yrs: Up to 3 m. @ Level IV (quasi-incarceration) & 0 to 9m. @ Level II Recommended Maximum: 15 days @ Level V
Acceptance of Responsibility	Up to 9 months @ Level I

Crimes in Category

11-804	<u>Reckless Burning/Exploding (< \$1500)</u>
11-805	<u>Cross or Religious Symbol Burning</u>
11-811(b)(2)(4)	<u>Criminal Mischief (>\$1000-<\$5000) (see note)</u>
11-812(a)(2)	<u>Graffiti and Possession of Graffiti Implements (<\$1500 damage) (see note)</u>
11-813	<u>Theft of Property from a Cemetery</u>
11-823	<u>Criminal Trespass 1st Degree</u> Dwelling/Animal Shelter, i.e. barn, stable
11-840	<u>Shoplifting (<\$1500)</u>
11-840A	<u>Use of Illegitimate Sales Receipt/UPC Label (<1500)</u>
11-841	<u>Theft (<\$1500) (see note)</u>
11-841B	<u>Theft: Organized Retail Crime (V<62, not infirm, value < \$1,000)</u>
11-848	<u>Misapplication of Property (< \$1500)</u>
11-849	<u>Theft of Rental Property (< \$1500)</u>
11-851	<u>Receiving Stolen Property (< \$1500)</u>
11-852A	<u>Selling Stolen Property (<\$1000)</u>
11-853	<u>Unauthorized Use of a Vehicle</u>
11-858(a)(2)	<u>Unlawful Operation Recording Device (Motion Picture) (see note) (6/28/06)</u>
11-861(b)(3)	<u>Forgery 3rd Degree (see note)</u>
11-891	<u>Defrauding Secured Creditors</u>
11-892	<u>Fraud in Insolvency</u>
11-900	<u>Issue Bad Check (< \$1500)</u>
11-903	<u>Unlawful Use Credit Card (< \$1500)</u>
11-906	<u>Deceptive Business Practices</u>
11-916	<u>Home Improvement Fraud (< \$1500)</u>
11-917(d)	<u>New Home Construction Fraud (<\$1,500)</u>
11-918	<u>Ticket Scalping (Prior Conviction)</u>
11-926(d)(1)	<u>Trademark Counterfeiting</u> (No priors/<100 items/<\$2,000) (7/7/05)
11-932	<u>Unauthorized Computer Access (<\$500) (see note)</u>
11-933	<u>Theft Computer Services (<\$500) (see note)</u>
11-934	<u>Interruption Computer Services (<\$500) (see note)</u>
11-935	<u>Misuse Computer System Information (<\$500) (see note)</u>
11-936	<u>Destruction Computer Equipment (<\$500) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (<\$500) (see note)</u>
11-938	<u>Fail Cease Electronic Communication (<\$500) (see note)</u>
11-939	<u>Computer Offenses Penalties (<\$500) (see note)</u>
11-1472	<u>Video Lottery Cheat Device</u>

16-1136(b)	<u>Exploit Patient's Resources (<\$1000)</u>
31-1003	<u>False Statement to Obtain Benefits (<\$500) (see note)</u>
31-1004(1)	<u>False Benefit Reimbursement Statement (<\$500) (see note)</u>
31-1006	<u>Unlawful Conversion of Benefits (<\$500) (see note)</u>
31-3913(b)	<u>Exploitation of Infirm Adult (<\$500)</u>

Supplemental Notations for Class A Misdemeanors: Property

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-811(b) (2)(4)	<u>Criminal Mischief</u> <ul style="list-style-type: none"> (4) If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 109(a)(9), the court shall impose a minimum mandatory fine of at least \$500.
11-812(a)(2)	<u>Graffiti and Possession of Graffiti implements</u> The penalty for graffiti shall include a minimum fine of not less than \$1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).
11-841	<u>Theft</u> (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-858(a)(2)	<u>Unlawful Operation Recording Device (Motion Picture)</u> Notwithstanding any law to the contrary, may include a max. fine of \$50,000
11-861(b)(3)	<u>Forgery 3rd Degree</u> (c) Restitution for resultant losses to all parties.
11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	<u>Unauthorized Computer Access</u> <u>Theft Computer Services</u> <u>Interruption Computer Services</u> <u>Misuse Computer System Information</u> <u>Destruction Computer Equipment</u> <u>Unauthorized Electronic Mail</u> <u>Fail to Cease Electronic Communication</u> <u>Computer Offense Penalties</u> <ul style="list-style-type: none"> (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. (g) Amounts may be aggregated to determine degree of crime. (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.

31-1003 31-1004(1) 31-1006	<u>False Statement to Obtain Benefits</u> <u>False Benefit Reimbursement Statement</u> <u>Unlawful Conversion of Benefits</u> <ul style="list-style-type: none">• 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State• 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.
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Class A Misdemeanors

IV.) Order & Decency (MA4)

Sentence Range (Order & Decency Category) MA4	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense: Up to 12 m. @ Level I 2nd w/in 18 m.: Up to 12m. @ Level II 3rd w/in 3 yrs.: Up to 6m. @ Level III & 0 to 6m. @ Level II Recommended Maximum Up to 15d. @ Level V
Acceptance of Responsibility	Up to 9 months @ Level I
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-501	<u>Criminal Solicitation 3rd Degree</u> Solicit to commit misdemeanor
11-511	<u>Conspiracy 3rd Degree</u> Conspires to commit misdemeanor
11-601(a)(1)	<u>Offensive Touching</u> Vt= LEO, FF, CO, Medical personnel
11-601(a)(2)	<u>Offensive Touching (see note)</u> Bodily Emissions
11-625	<u>Unlawfully Administer Drugs</u>
11-628A	<u>Vehicular Assault 2nd Degree</u> (1) Criminal negligence: serious injury/ (2) DUI: injury
11-652	<u>Self Abortion</u>
11-765	<u>Indecent Exposure 1st Degree</u> Vt= <16 y.o.a.
11-781	<u>Unlawful Imprisonment 2nd Degree</u> (Special DVCategory May Apply) Knowingly restrain Refer to Pg. 105
11-785	<u>Interference with Custody</u> (Special DV Category May Apply) Refer to Pg. 105
11-791	<u>Coercion</u> (Special DV Category May Apply)
11-871	<u>Falsifying Business Records</u>
11-873	<u>Tampering w/ Public Records 2nd Degree</u>
11-877	<u>Offering False Instrument for Filing</u>
11-881	<u>Bribery</u>
11-882	<u>Receiving a Bribe</u>
11-893	<u>Interference Levied-Upon Property</u>
11-907	<u>Criminal Impersonation</u>
11-909	<u>Execution of Document by Deception</u>

11-918	<u>Ticket Scalping</u>
11-921	<u>Sale Transferred Recorded Sound</u>
11-1102	<u>Endanger Welfare of Child</u> (Special DV Category May Apply) Refer to Pg. 105
11-1105	<u>Endanger Welfare of Incompetent</u>
11-1113(a)	<u>Aggravated Criminal Non-support (Prior Conviction) (see note)</u>
11-1114	<u>Body Piercing & Tattoos</u> (Prior Conviction)
11-1114A(a)	<u>Tongue Splitting 1st Degree</u>
11-1205	<u>Give Unlawful Gratuity</u>
11-1206	<u>Receive Unlawful Gratuity (value < \$1,000)</u>
11-1207	<u>Improper Influence</u>
11-1211	<u>Official Misconduct</u>
11-1212	<u>Profiteering</u>
11-1221	<u>Perjury 3rd Degree</u> False statement under oath
11-1233	<u>Make False Written Statement</u>
11-1243	<u>Obstructing Firefighting</u>
11-1244	<u>Hinder Prosecution of Misdemeanor</u>
11-1245	<u>False Report Incident/Child Abduction (see note) (6/30/05)</u>
11-1246	<u>Compound a Crime</u>
11-1249	<u>Abetting Violation of Driver's License</u>
11-1256	<u>Promote Prison Contraband</u>
11-1257(b)	<u>Resist Arrest Without Violence</u>
11-1257A	<u>Use of Animal to Avoid Capture</u>
11-1260	<u>Misuse of Prisoner Mail</u>
11-1266	<u>Tampering w/Juror</u>
11-1267	<u>Misconduct by Juror</u>
11-1271(2-8)	<u>Criminal Contempt</u> (2)Breach of peace/ (3) Intentional disobedience/ (4)Refusal of Oath/to Answer/ (5)Publish false proceedings/ (6)Refuse Jury Service/ (7)Juror fail to attend trial/ (8)Defendant's failure to appear for criminal proceedings
11-1303(3)(a)	<u>Disorderly Conduct: y/Funeral/Memorial Service (6/1/06)</u>
11-1311	<u>Harassment</u>
11-1325	<u>Cruelty to Animals (see note)</u>
11-1325A(b)	<u>Trade in Dog/Cat By-Products (Flesh) (see note)</u>
11-1327	<u>Dangerous Animal</u> Injury to Person/Serious Injury or Death Animal
11-1331	<u>Desecration</u>
11-1332	<u>Abusing a Corpse</u>
11-1335(a)(1-5, 8)	<u>Violation of Privacy (6/30/06)</u> (1)Trespass to eavesdrop/ (2) Installs recording device in private place/ (3)Installs/uses recording device outside private place/ (4) Intercepts/ (5) Divulges private communication/ (8) Installs in MV electronic/mechanical tracking device
11-1340	<u>Desecration of Burial Place (see note)</u>
11-1365	<u>Obscene Literature Harmful to Minors</u>
11-1401	<u>Advancing Gambling 2nd Degree</u> Unlawful(ly) (1)Sell/dispose/PWI lottery policy or similar/ (2)Device to do same/ (3)Interest in lottery policy writing or in selling/disposing policy or similar/ (4)Device to do same
11-1402	<u>Foreign Lotteries</u>

11-1403	<u>Advancing Gambling 1st Degree</u> Unlawful(ly) (1)Keeping "books"/ (2)Owner/occupant property for purpose of bookkeeping/ (3)Recording bets/ (4)Place bets
11-1404	<u>Providing Premises for Gambling (Prior Conviction w/in 5 yrs)</u>
11-1405	<u>Possession Gambling Device</u>
11-1406	<u>Interest in Keeping Gambling Device</u>
11-1411	<u>Unlawful Dissemination Gambling Information</u>
11-1428	<u>Maintaining an Obstruction (Prior Conviction w/in 2 yrs)</u>
11-1448A(k)	<u>Improper Request/Dissemination Criminal History Check</u>
11-1448A(m)	<u>Firearm Sale Violation</u>
11-1456	<u>Allow Unlawful Access to Firearm by Minor</u>
11-1457(j)(1)	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class B Misdemeanor) (see note)</u>
11-1471(a)(b)(d)(e)(l)	<u>Video Lottery Cheat Device</u> (first offense)
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device <1500</u>
11-8522	<u>Refusal to Permit Photo or Fingerprints</u>
11-8523(a)	<u>Refusal/Neglect/Hinder Report</u>
11-8523(d)	<u>Unlawful Use of Criminal History Record Information</u>
11-8562(a)	<u>Fail to Obtain Child Sex Abuser Information</u>
16-1136(c)	<u>Fail to Correct Abuse/Neglect of Patient in Residential Facility</u>
29-4830(f)(1)(f)(2)	<u>Standards of Licensing</u>
29-4831(a)(b)	<u>Prohibition on employment of persons or service agencies w/o a license</u>
29-4836(a)(b)	<u>Penalties for wagering by excluded persons</u>
31-610(a)(2)	<u>Transfer/Alter/Possess Food Stamps (<\$500) (see note)</u>

Supplemental Notations for Class A Misdemeanors (Order & Decency):

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-601(a)(2)	<u>Offensive Touching</u> (b) The Defendant shall be tested for communicable diseases, the costs of which are to be assessed as costs of conviction. The results are to be provided to the AG, the victim, the Defendant and the D.O.C. medical provider
11-1113(a)	<u>Aggravated Criminal Non-support (Prior Conviction)</u> <ul style="list-style-type: none"> • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1245	<u>False Report Incident/Child Abduction</u> Minimum Mandatory sentence: Fine= \$500 or for (3)(d): \$1,000, which cannot be suspended + 100 hrs community service + reimbursement to the State/government agency for costs of investigation and/or response
11-1325	<u>Cruelty to Animals</u> (c) The Defendant shall not own or possess any animal for 5 yrs following conviction (but see exceptions). Violation of this condition is punishable by a mandatory \$1,000 fine and forfeiture of the animal.
11-1325A	<u>Trade in Dog/Cat By-Products</u> (c) Defendant shall: (1) be prohibited from possessing dog/cat for 15 yrs after conviction (but see exceptions),(2) pay a fine of \$2,500 and (3) forfeit any dog/cat.

11-1340	<u>Desecration of Burial Place</u> Mandatory Minimum Fine= >\$1,000 up to \$10,000.
11-1457	<u>Possession Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Class B Misdemeanor). <u>(j)(4) An elementary or secondary school student shall be expelled for 180d.</u>
31-610(a)(2)	<u>Transfer/Alter/Possess Food Stamps (<\$500)</u> <ul style="list-style-type: none">• May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act

Class A Misdemeanors

V.) Controlled Substances (MA5)

Sentence Range (Controlled Substance Category) MA5	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense w/16-4764 First Offender Program: Minimum 12 m. @ Level I (7/12/05) 1st Offense: 12 m. @ Level II 2nd Offense w/in 2 Years: 6 m. @ Level III & 6m. @ Level II 3rd Offense w/in 3 Years: 6 m. @ Level V
Acceptance of Responsibility	Up to 9 months @ Level II

Crimes in Category

16-4740	<u>Sale of Pseudoephedrine/Ephedrine (6/14/05)</u>
16-4759(b)	<u>Registrant Crimes</u> Violates (a)(3)
16-4763(a)	<u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Is an aggravating factor

Supplemental Notations for Class A Misdemeanors (Controlled Substances):

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Any violations of Title 16, §§4751-4761: 16-4763(c) If Defendant moved to this State in order to commit offense penalty shall be increased by 1 yr at Level V
Any offenses under Title 16, Chapter 47: 16-4763(d) Substance Abuse Treatment: Upon request of D.O.C. the Defendant may be placed during last 180 d. of Level V sentence in quasi-incarceration @ Level IV
Costs of prosecution may be ordered. (Title 11, §4204(i))

Class B Misdemeanors

Sentence Range (Class B Misdemeanors) MB	
Statutory Sentence	0 to 6m. @ Level V and up to \$1,150 fine
Presumptive Sentence	1st &/or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: up to 6m. @ Level I or II

Crimes in Category

11-628	<u>Vehicular Assault 3rd Degree (see note)</u> Criminal negligence: physical injury
11-653	<u>Issuing Abortion Articles</u>
11-812(b)(1)	<u>Possession of Graffiti Implements (see note)</u>
11-820	<u>Trespass with Intent to Peep</u>
11-858(a)(2)	<u>Unlawful Operation Recording Device (Still Photograph) (6/28/06)</u>
11-910	<u>Debt Adjusting</u>
11-918	<u>Ticket Scalping</u>
11-1106	<u>Unlawful Dealing with Child</u>
11-1113(a)	<u>Criminal Non-support (see note)</u>
11-1114	<u>Body Piercing & Tattoos</u>
11-1114A(b)	<u>Tongue Splitting 2nd Degree</u> Performed by doctor/dentist and recipient is: (1)under the influence/ (2)minor w/out legal guardian's consent
11-1241	<u>Refusing to Aid Police Officer</u>
11-1248	<u>Obstructing Control of Rabies</u>
11-1271(1)	<u>Criminal Contempt</u> Disorderly Behavior
11-1273	<u>Unlawful Grand Jury Disclosure</u>
11-1313	<u>Malicious Interference with Emergency Communications</u>
11-1325A(a)	<u>Trade in Dog/Cat Byproducts (Fur/Hair)</u>
11-1333	<u>Trading in Human Remains/Funerary Objects</u>
11-1341	<u>Lewdness</u>
11-1342	<u>Prostitution</u>
11-1355	<u>Permitting Prostitution</u>
11-1452	<u>Unlawful Dealing with Knuckles-Combination Knife (see note)</u>
11-1453	<u>Unlawful Dealing with Martial Arts Throwing Star (see note)</u>
11-1457(j)(2)	<u>Poss. Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Unclassified Misdemeanor)(see note)
16-4761(b)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and there is an aggravator
16-4763(b)	<u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Violates 4763(a)
16-4764(a)	<u>Possession of Marijuana</u> Is an aggravating factor
16-4774(a)	<u>Drug Paraphernalia</u> Possession

Supplemental Notations Class B Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-812 (b)(1)	<u>Possession of Graffiti Implements</u> Min. fine of not less than \$500 which shall not be subject to suspension, restitution for damages to property and 100 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of possession of graffiti implements. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).
11-1113	<u>Criminal Non-support</u> <ul style="list-style-type: none">• Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person• (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1452 11-1453	<u>Unlawful Dealing with Knuckles-Combination Knife</u> <u>Unlawful Dealing with Martial Arts Throwing Star</u> <ul style="list-style-type: none">• 11-1457(b)(5&6)&(j)(1): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class A Misdemeanor.• 11-1457(j)(4): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1457	<u>Poss. Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Unclass Misdemeanor) (j)(4) An elementary or secondary school student shall be expelled for 180d.

Unclassified Misdemeanors

Sentence Range (Unclassified Misdemeanors) UM	
Statutory Sentence	Up to 30d. @ Level V and up to \$575 fine
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: 0 to 6m. @ Level I or II

Crimes in Category

11-601	<u>Offensive Touching</u> (Special DV Category May Apply) Refer to Pg. 105
11-602	<u>Menacing</u> (Special DV Category May Apply) Refer to Pg. 105
11-627	<u>Substances Releasing Vapors or Fumes</u>
11-763	<u>Sexual Harassment</u> (Special DV Category May Apply) Refer to Pg. 105
11-764	<u>Indecent Exposure 2nd Degree</u>
11-811(b)(3)(4)	<u>Criminal Mischief (<\$1000) (see note)</u>
11-822	<u>Criminal Trespass 2nd Degree</u> Building/ Real Property + Fenced/ Enclosed
11-850(b)(1)	<u>Unlawful Telecommunication Device (see note)</u>
11-914	<u>Unlawful Use of Consumer Identification Information</u>
11-915	<u>Unlawful Use of Credit Card Information</u>
11-915A	<u>Unlawful Printing Credit Card Receipt</u>
11-922	<u>Improper Labeling (<100) (see note) (7/10/06)</u>
11-925	<u>Video Privacy Protection</u>
11-1107	<u>Endangering Children</u>
11-1250(a)	<u>Harassment of Law Enforcement Animal</u>
11-1301	<u>Disorderly Conduct</u> (Special DV Category May Apply) Refer to Pg. 105
11-1315	<u>Public Intoxication</u> (3rd Offense w/in 1 Year)
11-1322	<u>Criminal Nuisance</u>
11-1324	<u>Obstructing Ingress/Egress at Public Building</u>
11-1343	<u>Patronizing a Prostitute (see note)</u>
11-1404	<u>Providing Premises for Gambling</u>
11-1445 (1-3)	<u>Unlawful Dealing with Dangerous Weapon</u> (1) Possess/Sell BB/Air gun or ammunition for same/ (2)Unlawfully transfer to u/16 a BB/Air gun/ (3)Parent permits u/16 to have FA, BB/ Air/ Spear gun unsupervised
11-1446	<u>Unlawful Dealing with Switchblade (see note)</u>
11-1907(c)	<u>Fail to Answer Summons (see note)</u>
11-2109(c)(2)	<u>Breach of Conditions of Bail (see note)</u>
11-2113	<u>Breach Conditions of Release (Misdemeanor) (see note)</u>
11-6562A	<u>Furnishing Contraband</u>
16-2513(a)	<u>Threat/Coerce/Intimidate to W/D Medical Treatment (see note)</u>
16-3111(b)	<u>Violations Concerning Vital Statistics Records (see note)</u>
16-4761(a)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u>
16-4764(b)	<u>Possession of Marijuana</u> Fine not more than \$575 and imprisonment not more than 3 months
16-4774 (d)	<u>Advertisement of Drug Paraphernalia</u>
16-6611(b)	<u>Violation of Fire Regulations (see note)</u>
29-4810	<u>Lottery Sales to persons prohibited</u>

Supplemental Notations Unclassified Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.	
All Drug crimes require additional 15% surcharge for rehabilitation fund	
Restitution shall be ordered for losses to victim. (Title 11, §4106)	
Costs of prosecution may be ordered. (Title 11, §4204(i))	
11-811(b)(3)(4)	<u>Criminal Mischief</u> <ul style="list-style-type: none"> (4) If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9), the court shall impose a minimum mandatory fine of at least \$500.
11-850(b)(1)	<u>Unlawful Telecommunication Device</u> <ul style="list-style-type: none"> Punishable by up to 1 yr at Level V; Fine up to \$10,000 (b)(7) All fines shall be imposed for each unlawful telecommunication or access device (b)(8) Restitution shall be ordered in the manner prescribed by §4106 (b)(9) The court may order forfeiture of unlawful device(s)
11-922	<u>Improper Labeling (<100)</u> 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.
11-1343	<u>Patronizing a Prostitute</u> <ul style="list-style-type: none"> (b) Minimum Mandatory Fine= \$500, which shall not be suspended (c)/(d) For a prior conviction w/in 5 yrs, any vehicle used in connection shall be seized
11-1446	<u>Unlawful Dealing with Switchblade</u> <ul style="list-style-type: none"> 11-1457(b)(3)&(j)(2): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class B Misdemeanor. 11-1457(j)(4): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1907	<u>Fail to Answer Summons</u> Maximum penalty: 30 d. imprisonment &/or \$100 fine.
11-2109(c)(2)	<u>Breach of Conditions of Bail</u> Maximum penalty: Imprisonment= < 1yr.&/or Fine <\$500
11-2113	<u>Breach Conditions of Release (Misdemeanor)</u> Maximum penalty: 1 yr. imprisonment &/or \$500 fine.
16-2513(a)	<u>Threat/Coerce/Intimidate to W/D Medical Treatment</u> Mandatory penalty: >\$500/<\$1,000 fine; >30 d. /<90 d. imprisonment
16-3111(b)	<u>Violations Concerning Vital Statistics Records</u> Maximum penalty: Fine up to \$1,000; Imprisonment up to 1 yr.
16-6611(b)	<u>Violation of Fire Regulations</u> <ul style="list-style-type: none"> Reckless violation-Maximum penalty: up to 10 d. imprisonment &/or up to \$100 fine. Each & every day the violation continues after notification shall be deemed a separate offense

Violations

Sentence Range (Violations) V	
Statutory Sentence	1st offense: Up to \$345 2nd offense (same violation): Up to \$690 3rd offense (same viol. W/in 5 yrs): Up to \$1150
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: Up to 6m. @ Level I

Crimes in Category

11-821	<u>Criminal Trespass 3rd Degree</u>
11-1116	<u>Tobacco Sale Violations: Sell/Distribute to u/18 (see note)</u>
11-1117	<u>Tobacco Sale Violations: Fail to Post Notice to u/18 (see note)</u>
11-1118	<u>Tobacco Sale Violations: Dist Samples/Coupons to u/18 (see note)</u>
11-1119	<u>Tobacco Sale Violations: Dist by Vending Machine (see note)</u>
11-1120	<u>Tobacco Sale Violations: Sell from Unlawful Package (see note)</u>
11-1315	<u>Public Intoxication</u>
11-1316	<u>Out-of-State Liquor Agent Registration (see note)</u>
11-1320	<u>Loitering on State-Supported School Property</u>
11-1321	<u>Loitering</u>
11-1323	<u>Obstructing Public Passages</u>
11-1330	<u>Smoking on Bus or Trolley</u>
11-1407	<u>Engaging in Crap Game</u>
11-1428	<u>Maintaining an Obstruction</u>

Supplemental Notations for Violations:

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-1116-11120 (penalties §11-1121)	<u>Tobacco Sale Violations</u> <ul style="list-style-type: none"> Mandatory Fines: 1st offense= \$250, 2nd offense= \$500, 3rd and subsequent offenses= \$1,000 Prior conviction w/in 12 m.: Defendant's license to sell tobacco may be suspended for up to 6m. w/out refund of registration fees
11-1316	<u>Out-of-State Liquor Agent Registration</u> Violations shall result in the loss of the right to register or registration for period of 6m.

Title 21 and Title 23 Offenses

Crimes In Category

21-2810	<u>Driving After Judgment Prohibited (see note)</u>
21-4103(b)	<u>Flee or Attempt to Elude (see note)</u>
21-4112A(c)	<u>Unlawful Sale Traffic Control Signal Preemption Devices (see note)</u>
21-4175	<u>Reckless Driving (see note)</u>
21-4175A	<u>Aggressive Driving (see note)</u>
21-4176	<u>Careless or Inattentive Driving (see note)</u>
21-4176A	<u>Operation of Vehicle Causing Death (see note)</u>
21-4177 et al.	<u>Driving a Vehicle While Under the Influence (see note)(also note T11-4219 below)</u>
21-4201	<u>Leaving the Scene of an Accident (see note)</u>
21-4202	<u>Leaving the Scene of an Accident (Injury/Death) (see note)</u>
23-2302	<u>Operation of a Vessel or Boat While Under the Influence (see note)</u>

Supplemental Notations for Title 21 Offenses:

Per SENTAC Policy #15: Traffic offenses with the exception of 21-2810 (Driving after Judgment Prohibited) do not come under the purview of SENTAC's sentencing recommendations. However, in the interest of conserving expensive and limited prison space for the violent and proven incalcitrant offender, it is strongly recommended that Title 21 offenders not be given a sentence to Level V incarceration unless that have previously been sentenced to, and failed at, supervision in Level III & IV, or unless incarceration is mandated by law. Legislative mandates for the above listed offenses have been noted below.
21-4205(a) Other than offenses involving injury, death or DUI, terms of imprisonment may be served in quasi-incarceration (Level IV).
21-4205(b) For offenses involving injury caused by operation of a motor vehicle or DUI, imprisonment shall be served at Level V or in quasi-incarceration (Level IV) so long as such placement is in a D.O.C. facility which requires full-time residence and that the person may not be outside of the confines of said facility without armed supervision.
21-4205(c) For offenses involving death caused by operation of a motor vehicle or DUI, imprisonment shall be served at Level V.
21-4205(d) The appropriate supervision level under (a) or (b) shall be determined by D.O.C. and not by the sentencing judge.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))
11-4101(f)(1) In addition to, and at the same time as any fine, penalty or forfeiture is assessed to a criminal defendant, recipient of a civil offense, or any child adjudicated delinquent, there shall be levied an additional surcharge of 50% of the fine for the Transportation Trust Fund imposed and collected for any violations of Title 21 of the Delaware Code.
11-4101(f)(3) If a fine or penalty is waived in whole or in part, the court may, in its discretion, waive up to the same percentage of the assessment.

21-2810	<u>Driving After Judgment Prohibited</u>	
	Statutory Sentence	<ul style="list-style-type: none"> Habitual Offender: (1) 1st Conviction- Mandatory Imprisonment from 90d. up to 30m. & Fine up to \$1,150; (2) Prior Conviction- Mandatory Imprisonment from 180d. up to 5 yrs. & Fine up to \$2,300. Mandatory Imprisonment not subject to suspension
	Presumptive Sentence	(1) 1st Conviction: 3m. @ Level V (2) Prior Conviction: 6m. @ Level V
21-4103(b)	<u>Flee or Attempt to Elude</u> Class G Felony. 1st Conv: Min.Man. fine of \$575 which may not be suspended. Subsequent Conv.: Min.Man. fine of \$1150 which may not be suspended.	
21-4112A(c)	<u>Unlawful Sale Traffic Control Signal Preemption Devices</u> Class A Misdemeanor	
21-4134(d)	<u>Operation of vehicles upon approach of authorized emergency vehicles</u> Class F Felony	
21-4175	<u>Reckless Driving</u> Mandatory Minimum Sentences: <ul style="list-style-type: none"> 1st Offense: 10 – 30d. @ Level V; Fine= \$100–\$300 Prior Conviction w/in 3 yrs.: 30 – 60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended. If charge is result of DUI reduction: Completion of course required under §4177D and payments of its attendant fees are mandated. The court must notate the record that the conviction was alcohol-related and, as result, shall be reflected upon Defendant’s motor vehicle record. 	
21-4175A	<u>Aggressive Driving</u> Mandatory Minimum Sentences <ul style="list-style-type: none"> 1st Offense: 10-30d. @ Level V; Fine= \$100–\$300 Prior Conviction w/in 3 yrs.:30-60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended. Driving privileges suspended for 30d. Completion of Behavior Modification course and payment of its attendant fees are mandated. 	

21-4176	<p><u>Careless or Inattentive Driving</u></p> <p>Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> • 1st Offense: Fine= \$25–\$115 • Prior Conviction w/in 3 yrs: 10-30d.@ Level; Fine=\$50–\$230 • (d)(1) In addition to any other penalty if the court determines that the commission of that offense contributed to the serious physical injury of a vulnerable user of a public right of way, the court shall: <ol style="list-style-type: none"> a. Impose a sentence that requires the convicted person to: <ol style="list-style-type: none"> 1. complete a traffic safety course approved by DMV 2. Perform up to 100 hours of community service which much include activities related to driver improvement and providing public education on traffic safety; b. Impose, but suspend on the condition that the person complete the requirements of (d)(1)a, <ol style="list-style-type: none"> 1. A fine of not more than \$550 2. A suspension of driving privileges as provided in Section 2733(a)(2) of this; and 3. Set a hearing date up to one year from the date of sentencing. At that Hearing, the court shall: <ol style="list-style-type: none"> A. If the person has successfully completed the requirements described in paragraph (d)(1)(a) of this section, dismiss the penalties imposed under (d)(1)b. 1. and 2 of this section. B. If the person has not successfully completed the requirements Described in (d)(1)(a) of this section, either <ol style="list-style-type: none"> I. grant the person an extension based on good cause shown, or II. impose the penalties under (d)(1)b. 1. and 2. of this section.
21-4176A	<p><u>Operation of Vehicle Causing Death</u></p> <ul style="list-style-type: none"> • Maximum penalty 1st Conviction: up to 30 m. imprisonment &/or \$1,150 Fine • Prior Conviction: up to 60 m. imprisonment &/or \$2,300 Fine

21-4177(d)	<p><u>Driving a Vehicle While Under the Influence(Effective until July 1, 2012)</u></p> <p>Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> • 1st Offense: (1) up to 6m. @ Level V; (2) Fine= \$500-\$1,500; (3) Completion of alcohol evaluation and program (§4177D) which may include up to 6m. confinement & a fee not in excess of maximum fine under this section; (4) 12m. DL revocation • 2nd Offense: (1) 60d-18m. @ Level V; (2) Fine= \$750-\$2,500; minimum sentence may not be suspended; (3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section; (4) 18 m. DL revocation if B.A.L. < .16/ 24. if B.A.L.=.16-.19/ 30m. if B.A.L. = > .20.; (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater • 3rd Offense: (Class G Felony): (1) 1-2 yrs. imprisonment (first 3m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind);(2) Fine= \$1,500-\$5,000. (3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section; (4) 24m. DL revocation if B.A.L. < .16/ 30m. if B.A.L.=.16-.19/ 36m. if B.A.L. = > .20.; (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. • 4th Offense: (Class E Felony): (1) 2-5 yrs. imprisonment (first 6m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind); (2) Fine= \$3,000-\$7,000. (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m confinement & a fee not in excess of maximum fine under this section. (4) 60 months revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless indigent (4177G9e)). • 5th Offense: (Class E Felony) (1) 3-5 yrs. (2) Fine= \$3,500-\$10,000(3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater; Payment of associated costs is required unless indigent (§4177G(e)). • 6th Offense: (Class D Felony): (1) 5-8 yrs. (2) Fine=\$5,000-\$10,000 (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after the first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless indigent (4177G(e)). • 7th or for any subsequent offense: (Class C Felony): (1) 10-15 yrs. (2) Fine= \$10,000-\$15,000 (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to defendant after the first 12m of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless
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	<p>indigent (4177G9e)).</p> <p>4177L Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective until July 1, 2012]</p> <p>(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$200 for the first offense and not less than \$400 nor more than \$1,000 for each subsequent offense.</p> <ul style="list-style-type: none"> • For the fourth, fifth, sixth, seventh offense or greater, the provisions of Section 4205(b) or Section 4217 of Title 11 or any other statute to the contrary notwithstanding, the first six months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough, or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to Section 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in the first degree pursuant to section 636(a)(2) of Title 11. • Any provisions under (d)(3) may be applied upon motion of AG. • Aggravating Factor: In addition to the above, if a person > 17 y.o.a. was in the vehicle, the following additional requirements must be added: (a) 1st offense- 40 hrs. community service benefiting children & \$230-\$1,150; (b) Prior offense involving same: 80 hrs. community service benefiting children & \$575-\$2,300. • Revocation of driving privileges will remain in effect until (1) the minimum required period AND (2) completion of alcohol evaluation and program have been satisfied. The court shall take possession of the Defendant's driver's license upon conviction and forward it to the appropriate agency (§4177A(c)) <p>Discretionary Sentence Conditions:</p> <ul style="list-style-type: none"> • For a violation of (a) or (b), the Court may order an ignition interlock device for a minimum period of 1 yr. A person violating (a) while also in violation of this section shall be sentenced to 60d. imprisonment & a fine of \$2,300. • §4177B First Offenders: Election in Lieu of Trial • §4177G Subsequent Offender eligibility for Interlock Ignition Device License <p>11-4219. Continuous Remote Alcohol Monitoring Program.</p> <p>(a) There is hereby established for sentencing and probation purposes a Continuous Remote Alcohol Monitoring Program which shall use technology to monitor offenders for alcohol use. The program shall be administered by the Department of Correction which shall have the sole authority to determine which offenders are accepted into the program.</p> <p>(b) The Board of Parole or any Court of competent jurisdiction may request and recommend, as part of conditions of release or the sentence of any person convicted under § 4177(a) of Title 21 for a first offense where the first offender election is not available, or for a subsequent offense involving a blood alcohol content of .20 or higher, a period of continuous remote alcohol monitoring not to exceed 90 days for a first offense and 120 days for a second offense.</p>
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	<p>(c) Any inmate incarcerated for violations of § 4177 of Title 21 and selected for participation in the program shall be released on Level IV status, subject to the conditions of the program, and those conditions imposed by the sentencing judge. The remainder of the participant's sentence of incarceration shall be suspended upon completion of the program requirements. Participants failing to satisfactorily complete the program shall be returned to the Board of Parole or the sentencing authority for resentencing.</p> <p>(d) Any offender considered for participation must agree to adhere to the conditions established for participation before being accepted into the program.</p> <p>(e) The Department of Correction shall report annually on the use of the program, and its effectiveness as a supervision mechanism. (75 Del. Laws, c. 143, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 381, §§ 1, 2; 76 Del. Laws, c. 134, § 1; 76 Del. Laws, c. 366, § 1.)</p>
21-4177(d)	<p><u>Driving Vehicle While Under the Influence(Effective July 1, 2012)</u></p> <ul style="list-style-type: none"> • 1st Offense: (1) up to 12m @ Level V; (2) Fine= \$500-\$1,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f) not to exceed a total of 15m & to pay a fee not to exceed the maximum fine; (4) 12m DL revocation; if BAC .15-.19 Revocation 18m; if BAC >.19 Revocation 24m • 2nd Offense: Occurring within 10 years of prior offense: (1)60d-18m @ Level V, minimum sentence may not be suspended; (2) Fine = \$750-\$2,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f);(4) 18m DL revocation; if BAC is .15-.19 Revocation 24m; if BAC >.19 Revocation 30m.(5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period; • 3rd Offense: (Class G Felony) (1) 1y-2y @ Level V, first 3m shall not be suspended but shall be served at Level V and shall not be subject to any early release, furlough, or reduction of any kind; Sentencing court may suspend up to 9 months of any minimum sentence, provided however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program as set forth in 4177(d)(9);(2) Fined not more than \$5,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in random breath or urine analysis during period of supervision; (4) 24m DL revocation, if B.A.C.L.is .15-.19, 30m, if B.A.L. > .19, 36m; (5) An intensive inpatient or outpatient drug and alcohol treatment program of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period. • 4th Offense: (Class E Felony) (1) 2y-5y at Level V, first 6 months shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind; Sentencing court may suspend up to 18 months of any minimum sentence, provided, however, that any sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol treatment program as set forth in 4177(d)(9); (2) Fined not more than \$7,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in random breath or urine analysis during period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient

	<p>drug and alcohol treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.</p> <ul style="list-style-type: none"> <p>5th Offense: (Class E Felony) (1) 3y-5y at Level V, at least one-half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than \$10,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in periodic, random breath or urine analysis during the period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.</p> <p>6th Offense: (Class D Felony) (1) 4y-8y at Level 5, at least half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than \$10,000; (3) Completion of alcohol abstinence program of not less than 90 days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in periodic, random breath or urine analysis during the period of supervision; (4) 60m DL revocation; (5) An intensive inpatient or outpatient treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.</p> <p>7th or any subsequent offense: (Class C Felony) (1) 5y-15y at Level V, at least half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section, provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than \$15,000; (3) Completion of alcohol abstinence of not less than 90 days of sobriety as measured by a transdermal continuous monitoring device and shall participate in periodic, random breath or urine analysis during the period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient treatment program of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.</p>
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	<p>4177(d)(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:</p> <p>a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.</p> <p>b. For each subsequent like offense, be fined an additional minimum of \$750 and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.</p> <p>4177L Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective July 1, 2012]</p> <p>(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$200 for the first offense and not less than \$400 nor more than \$1,000 for each subsequent offense.</p>
21-4201	<p><u>Leaving the Scene of an Accident</u> Mandatory Minimum Sentence: (1) 60d.-6m. imprisonment; (2) Fine \$230-\$1,150; (3) 6m. driver's license revocation.</p>
21-4202	<p><u>Leaving the Scene of an Accident (Injury/Death)</u> Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> • (b) Injury (unclassified misdemeanor): (1) 1-2 yrs. imprisonment; (2) Fine= \$1,000-\$2,000; (3) 1 yr. driver's license suspension • (c) Death (class E felony): (1) 1 yr. minimum imprisonment of which the first 6m. may not be suspended; (2) 2 yr. driver's license suspension
23-2302	<p><u>Operation of a Vessel or Boat While Under the Influence</u> Mandatory Minimums:</p> <ul style="list-style-type: none"> • (1) 1st Offense: (1) 60d.-6m. @ Level V &/or (2) Fine= \$200-\$1,000 • (2) 2nd Offense w/in 5 yrs: (1) 60d.-18m. @ Level V and (2) Fine= \$500-\$2,000; minimum sentence may not be suspended and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • (3) 3rd Offense w/in 5 yrs: (Class G Felony): (1) 1-2 yrs. @ Level V (first 3m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind) and (2) Fine= \$1,000-\$3,000 and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8)

	<ul style="list-style-type: none">• (4) 4th or Subsequent Offense: (Class E Felony): (1) 2-5 yrs. @ Level V (first 6m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind) and (2) Fine: \$2,000-\$6,000 and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8)• (5)(a) Aggravating factor-If a juvenile <17 y.o.a. was on board, then:<ul style="list-style-type: none">• 1st Offense: Additional fine= \$200-\$1,000 and 40 hrs. community service• Subsequent Offense: Additional fine= \$500-\$2,000 and 80 hrs. community service
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SUMMARY OF DRUG OFFENSES

§ 4751A. Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following shall be an "aggravating factor" within the meaning of the offenses in this subchapter:

- a. The offense was committed within a protected school zone, as defined in § 4701 of this title;
- b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;
- c. The offense occurred in a vehicle, as defined in § 4701 of this title;
- d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and
- e. The defendant, during or immediately following the commission of any offense in this title:
 1. Intentionally prevented or attempted to prevent a law-enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law-enforcement officer; or
 2. Intentionally fled in a vehicle from a law-enforcement officer, as defined in § 222(15) of Title 11, while the law-enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.

(2) When the aggravating factors "protected school zone" and "protected park, recreation area, church, synagogue or other place of worship" of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.

(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven.

[78 Del. Laws, c. 13, § 33](#); [70 Del. Laws, c. 186, § 1](#);

§ 4751B. Prior qualifying Title 16 convictions.

For the purposes of this subchapter:

(1) A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.

(2) "Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction", as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.

(3) In any offense involving a "prior qualifying Title 16 conviction" or "2 prior qualifying Title 16 convictions", the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.

(4) Penalties. --

a. In any case in which a defendant has a "prior qualifying Title 16 conviction", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.

2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.

4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.

5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.

7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.

8. A defendant convicted of § 4757(c)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(c)(2) of this title.

9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.

10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.

11. A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was convicted of § 4763(c) of this title.

12. A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was convicted of § 4764(a) of this title.

b. In any case in which a defendant has "2 prior qualifying Title 16 convictions", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4752 of this title.

2. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

[78 Del. Laws, c. 13, § 34](#); [70 Del. Laws, c. 186, § 1](#);

§ 4751C. Quantity tiers related to drug offenses.

For the purposes of this subchapter:

(1) "Tier 5 Controlled Substances Quantity" means:

a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 5000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(2) "Tier 4 Controlled Substances Quantity" means:

a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 4000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 50 or more doses or 10 or more grams or 10 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(3) "Tier 3 Controlled Substances Quantity" means:

- a. 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 3000 grams or more of marijuana, as described in § 4701(26) of this title;
- d. 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;
- h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or
- i. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(4) "Tier 2 Controlled Substances Quantity" means:

- a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 1500 grams or more of marijuana, as described in § 4701(26) of this title;
- d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 25 or more doses or 5 or more grams or 5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(5) "Tier 1 Controlled Substances Quantity" means:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 175 grams or more of marijuana, as described in § 4701(26) of this title;

d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

[78 Del. Laws, c. 13, § 35.](#);

§ 4767. First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under § 4763 or § 4764 or § 4761(a) or (b) of this title; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under § 4763, § 4764 or § 4761(a) or (b) of this title arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within § 4752, § 4753, or § 4754 of this title.

(b) At time of arraignment any person qualifying under subsection (a) of this section as a first offender and who elects treatment under this section shall admit possession or consumption of a controlled substance by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation for a period of not less than 1 1/2 years, the terms and conditions of which shall include but not be limited to:

(1) Revocation of the person's driver's license and/or privileges within this State for a period of not less than 6 months, restoration of which shall be contingent upon successful completion of all mandatory terms and conditions required of probation to be completed during the term of revocation. Upon entry of a plea of guilty, as a first offender under this section, the clerk of the court or other person designated by the court shall forthwith report that fact to the Division of Motor Vehicles for action consistent with the provisions of this subsection. The Division of Motor Vehicles may issue a conditional license during this period of revocation upon written certification by the person's probation officer that a narrowly drawn conditional license is necessary for the limited purpose of performing the terms and conditions of probation.

(2) Performance of a minimum of 20 hours of community service work monitored by the court or probation office, performance of which shall be accomplished on at least 3 separate days and shall not, in any event consist of segments lasting more than 8 hours in succession. Community service performed pursuant to the terms of this paragraph shall be in addition to all other community service ordered and no community service ordered or performed pursuant to the terms of this section shall be performed or served concurrently with any other court ordered or approved community service.

(3) Completion of a 16-hour first-offender drug rehabilitation program, licensed by the Secretary of the Department of Health and Social Services and paid for by the first offender.

(4) Other such terms and conditions as the court may impose.

(c) If a term or condition of probation is violated, or if the defendant is found to have illegally possessed or consumed any controlled substance within 1 1/2 years of the entry of a plea under this section, the probation officer shall file with the court a written report of same, and the defendant shall be brought before the court and upon determination by the court that the terms have been violated or that the defendant has possessed or consumed any such controlled substance, the court shall enter an adjudication of guilt upon the record and proceed as otherwise provided under this title.

(d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be treated as a first offender under this section shall, by so doing, agree to pay the costs of the person's prosecution as a condition. There may be only 1 discharge and dismissal under this section with respect to any person.

[67 Del. Laws, c. 347, § 1](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 110, § 6](#); [75 Del. Laws, c. 167, § 2](#); [78 Del. Laws, c. 13 § 60](#);

§ 4768. Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), § 4763, or § 4764 of this title, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

16 Del. C. 1953, § 4765; 58 Del. Laws, c. 424, § 1; [78 Del. Laws, c. 13 § 44.](#);

Summary of Drug Offenses- Class B Felonies

Class B Felony (Violent)

Sentence Range (Violent Category) FBV	
Statutory Range	2 to 25 Years (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2 – 5 yrs;
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4752	<u>Drug dealing – Aggravated possession (see note)</u>
16-4757(c)(2)	<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)</u>

Supplemental Notations:

16-4752	<p><u>Drug dealing-Aggravated Possession</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 quantity;</p> <p>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;</p> <p>(3) Possesses a controlled substance in a Tier 5 quantity;</p> <p>(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or</p> <p>(5) Possesses a controlled substance in a Tier 2 quantity as defined in any of Section 4751C(4)a.-i., of this title and there are two aggravating factors.</p>
16-4757(c)(2)	<p><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:</u></p> <ul style="list-style-type: none"> • A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of 4757 and there is an aggravating factor in connection with at least one of the times.

Summary of Drug Offenses- Class C Felonies

Class C Felony (Violent)

Sentence Range (Violent Category) FCV	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 30 months @ Level V
Acceptance of Responsibility	Up to 22 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 1 year for all• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4753	<u>Drug dealing – Aggravated Possession;</u> <u>(see note)</u>
16-4757(c)(1)	<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u> <u>(see note)</u>

Supplemental Notations:

16-4753	<u>Drug Dealing-Aggravated Possession</u> (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity; (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor; (3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title; (4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section 4751C(4)a.-i. of this title; and there is an aggravating factor; or (5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;
16-4757(c)(1)	<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u> (1) A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision or subsection of 4757(a).

Summary of Drug Offenses- Class D Felonies

Class D Felony (Violent)

Sentence Range (Violent Category) FDV	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 2 years @ Level V
Acceptance of Responsibility	Up to 18 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4754	<u>Drug dealing – Aggravated possession</u> ; (see note)
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Supplemental Notations:

16-4754	<p><u>Drug dealing – Aggravated possession</u></p> <p>(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;</p> <p>(2) Possesses a controlled substance in a Tier 3 quantity; or</p> <p>(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor</p>
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Summary of Drug Offenses- Class E Felonies

Class E Felony (Violent)

Sentence Range (Violent Category): FEV	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 15 m. @ Level V
Acceptance of Responsibility	Up to 11 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4755	<u>Aggravated Possession</u> Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i.
16-4774(c)	<u>Delivery Drug Paraphernalia to Minor</u>

Supplemental Notations:

Summary of Drug Offenses- Class E Felonies

Class E Felony (Nonviolent)

Sentence Range (Nonviolent Category) FEN	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4758	<u>Unlawfully dealing in a counterfeit or purported controlled substance</u>
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Supplemental Notations:

Summary of Drug Offenses Class F Felonies

Class F Felony (Violent)

I.) (FFV)

Sentence Range (Violent Category): FFV	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 9 m. @ Level V
Acceptance of Responsibility	Up to 7 months at Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4756	<u>Aggravated Possession</u> A person who possesses a controlled substance in a Tier 1 quantity
16-4761(d)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who delivers or intends to deliver prescription drug and there is an aggravator

Summary of Drug Offenses- Class F Felonies

Class F Felony (Nonviolent)

Sentence Range (Nonviolent Category) FFN	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 12 m. for Title 11 offenses; up to 18 months for Title 16 offenses @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II for Title 11 offenses Up to 14 mos. @ Level II for Title 16 offenses
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4757(b)	Miscellaneous Drug Crimes (see note)
16-4759(b)(1,2,4)	Registrant Crimes Violates (a)(1), (a)(2), or (a)(4)
16-4760	Maintaining a Drug Property

Supplemental Notations:

16-4757(b)	Miscellaneous Drug Crimes 16-4757(a) (1)To distribute as a registrant controlled substance classified in Schedule I or II except pursuant to an order form as required by Section 4738 of this chapter; (2)To use in the course of manufacture, distribution, prescribing, dispensing, or research of a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person; (3)To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge; (4)To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; (5)To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance; (6)To acquire or attempt to or obtain possession of a controlled substance by theft; (7)To prescribe, or administer to another, any anabolic steroid, as defined in Section 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.
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Summary of Drug Offenses- Class G Felonies

Class G Felony (Violent)

Sentence Range (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 6 m. @ Level V. For 16-4767 & 16-4768: 3 - 9 m. @ Level V.
Acceptance of Responsibility	Up to 4 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4761(c)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
16-4774(b)	<u>Drug paraphernalia</u> Manufacture and sale

Supplemental Notations:

Class G Felony (Nonviolent)

Sentence Range (Nonviolent Category) FGN	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none">• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.• (c) Consecutive sentence shall not amount to more than limitations herein.• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly.• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4762(d)	<u>Hypodermic syringe or needle; delivering or possessing; disposal</u>
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Supplemental Notations:

Summary of Drug Offenses- Misdemeanors:

Class A Misdemeanor

Sentence Range (Controlled Substance Category) MA5	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense w/16-4764 First Offender Program Minimum 18 m. @ Level I(7/12/05) 1st Offense 12 m. @ Level II 2nd Offense w/in 2 Years: 6 m. @ Level III & 6m. @ Level II 3rd Offense w/in 3 Years: 6 m. @ Level V
Acceptance of Responsibility	Up to 9 mos @ Level II

Crimes in Category:

16-4740	<u>Sale of Pseudoephedrine/Ephedrine</u>
16-4759(b)	<u>Registrant Crimes</u> Violates (a)(3)
16-4763(a)	<u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Is an aggravating factor

Supplemental Notations:

Class B Misdemeanor

Sentence Range (Class B Misdemeanors) MB	
Statutory Sentence	0 to 6m. @ Level V and up to \$1,150 fine
Presumptive Sentence	1st &/or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: up to 6m. @ Level I or II

Crimes in Category:

16-4761(b)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and there is an aggravator
16-4763(b)	<u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Violates 4763(a)
16-4764(a)	<u>Possession of Marijuana</u> Is an aggravating factor
16-4774(a)	<u>Drug Paraphernalia</u> Possession

Supplemental Notations:

Unclassified Misdemeanors

Sentence Range (Unclassified Misdemeanors) UM	
Statutory Sentence	Up to 30d. @ Level V and up to \$575 fine
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs:0 to 6m. @ Level I or II

Crimes in Category

16-4761(a)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u>
16-4764(b)	<u>Possession of Marijuana</u> Fine not more than \$575 and imprisonment not more than 3 months
16-4774 (d)	<u>Advertisement of Drug Paraphernalia</u>

Supplemental Notations:

Revisions to Controlled Substances Act

Guide to HB-19 (revised October 4, 2011)

Overview

Contents of this Guide to HB-19:

Below are several tables that graphically relate charges under the revised drug offense regime. In order of appearance, they include:

1. Quantity thresholds by substance and tier;
2. Applicable aggravating factors;
3. Qualifying prior convictions;
4. Simple and aggravated possession offenses by quantity tier;
5. Drug dealing and manufacturing offenses by quantity tier;
6. Revised Title 16 offenses by section number;
7. Applicable penalties by offense classification.

CONTROLLED SUBSTANCE QUANTITY TIERS (16 DEL. C. § 4751C)

<u>SUBSTANCE</u>	<u>TIER 1:</u>	<u>TIER 2:</u>	<u>TIER 3:</u>	<u>TIER 4:</u>	<u>TIER 5:</u>
Cocaine	≥5g	≥10g	≥15g	≥20g	≥ 25g
Morphine / Opium / Heroin	≥1g	≥2g	≥3g	≥4g	≥ 5g
Marijuana	≥175g	≥1,500g	≥3,000g	≥4,000g	≥ 5,000g
Methamphetamine	≥5g	≥10g	≥15g	≥20g	≥ 25g
Amphetamine	≥5g	≥10g	≥15g	≥20g	≥ 25g
PCP	≥5g	≥10g	≥15g	≥20g	≥ 25g
LSD	≥2.5 ml or ≥25 doses	≥5 ml or ≥50 doses	≥10 ml or ≥100 doses	≥25 ml or ≥250 doses	≥ 50ml or ≥ 500 doses
Designer Drug	≥2.5 ml or ≥2.5g or ≥12.5 doses	≥5 ml or ≥5g or ≥25 doses	≥7.5 ml or ≥7.5g or ≥37.5 doses	≥10 ml or ≥10 g or ≥50 doses	≥ 12.5ml or ≥ 12.5g or ≥62.5 doses
Ecstasy (MDMA)	≥2.5 ml or ≥2.5g or ≥12.5 doses	≥5 ml or ≥5g or ≥25 doses	≥7.5 ml or ≥7.5g or ≥37.5 doses	≥10 ml or ≥10g or ≥50 doses	≥ 12.5ml or ≥ 12.5g or ≥62.5 doses
Prescription Drug: Narcotic Schedule II or III	N/A	≥3g or ≥30 doses	N/A	≥ 6g or ≥ 60 doses	N/A

"Dose" is defined by 16 DEL. C. § 4701(14) (2011). **AGGRAVATING FACTORS** (16 DEL. C. § 4751A)

a)	Offense committed within a protected school zone
b)	Offense committed within a protected park or place of worship zone
c)	Offense occurred in a vehicle
d)	Defendant was an adult and: <ul style="list-style-type: none"> • The Offense involved a juvenile as <ul style="list-style-type: none"> ○ A co-conspirator or accomplice, or ○ As the intended or actual recipient of the controlled substances; • And the defendant was more than four years older than the juvenile
e)	<ul style="list-style-type: none"> • Defendant, during or immediately following the commission of any offense in this Title, intentionally <ul style="list-style-type: none"> ○ Prevented or attempted to prevent officer from making an arrest by use of violence or force; or ○ Fled in a vehicle from a law enforcement officer, thereby creating a substantial risk of physical injury to other persons

- If both "Protected School Zone" and "Protected Park or Place of Worship Zone" are present as Aggravating Factors, then both may be alleged and proven, but together they count only as one.

QUALIFYING PRIOR CONVICTIONS (16 DEL. C. § 4751B)

IF CHARGED WITH A FELONY:

<u>One Qualifying Prior:</u>	<u>Two or More Qualifying Priors:</u>
Within previous 5 years from date of offense, Defendant has:	Has One Qualifying Prior (see left); AND
<ul style="list-style-type: none"> • Adult felony conviction under former Title 16 sections 4751, 4752, or 4753A; OR 	Within previous 10 years has an additional adult felony conviction or juvenile adjudication for:
<ul style="list-style-type: none"> • Adult felony conviction under any former Title 16 section that was a Class C Felony or higher; OR 	<ul style="list-style-type: none"> • Former Title 16 sections 4751, 4752, or 4753A; OR
<ul style="list-style-type: none"> • Conviction under current Title 16 sections 4752, 4753, 4754, 4755, or 4756; OR 	<ul style="list-style-type: none"> • Any former Title 16 section that was a Class C Felony or higher; OR
<ul style="list-style-type: none"> • Conviction under controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law. 	<ul style="list-style-type: none"> • Current Title 16 sections 4752, 4753, 4754, 4755, or 4756; OR
	<ul style="list-style-type: none"> • Controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law.

Note: if charged with a misdemeanor, one qualifying prior is as above, but also includes any convictions under sections 4761(a), 4761(b), 4763, or 4764, if within previous five years.

SIMPLE & AGGRAVATED POSSESSION:

<u>QUANTITY (TIER):</u>	<u>CONTROLLED SUBSTANCE</u>	<u>AGGRAVATING FACTORS:</u>	<u>NO PRIOR CONVICTIONS:</u>	<u>ONE PRIOR:</u>	<u>TWO OR MORE PRIORS:</u>
No Tier Quantity Alleged	Marijuana	0	Unclass. Misd. § 4764(a) ≤ \$575 & Imprisoned ≤ 3 months	Class B Misd. § 4751B(d)(1)(L)	"
		≥ 1	Class B Misd. § 4764(b)	"	"
	Not Marijuana	0	Class B Misd. § 4763(b)	Class A Misd. § 4751B(d)(1)(K)	"
		≥ 1	Class A Misd. § 4763(c)	"	"
Tier 1	All Substances	0	Class F Felony § 4756	Class D Felony § 4751B(d)(1)(G)	Class C Felony § 4751B(d)(2)(C)
		1	Class D Felony § 4754(3)	Class C Felony § 4751B(d)(1)(E)	"
		≥ 2	Class C Felony § 4753(5)	"	"
Tier 2	All Substances	0	Class E Felony § 4755	Class C Felony § 4751B(d)(1)(F)	Class B Felony § 4751B(d)(2)(B)
		1	Class C Felony § 4753(4)	Class B Felony § 4751B(d)(1)(B)	"
		≥ 2	Class B Felony § 4752(5)	"	"
Tier 3	All Substances	0	Class D Felony § 4754(2)	Class B Felony § 4751B(d)(1)(D)	"
Tier 3 or Tier 4	All Substances	≥ 1	Class B Felony § 4752(4)	"	"
Tier 4	All Substances	0	Class C Felony § 4753(3)	Class B Felony § 4751B(d)(1)(D)	"
Tier 5	All Substances	≥ 0	Class B Felony § 4752(3)	"	"

**DRUG DEALING / MANUFACTURING
(OR POSSESSION W/INTENT FOR EITHER)**

<u>QUANTITY (TIER):</u>	<u>CONTROLLED SUBSTANCE</u>	<u>AGGRAVATING FACTORS:</u>	<u>NO PRIOR CONVICTIONS:</u>	<u>ONE PRIOR:</u>	<u>TWO OR MORE PRIORS:</u>
No Tier Quantity Alleged or Tier 1	All Substances	0	Class D Felony § 4754(1)	Class C Felony § 4751B(d)(1)(C)	Class B Felony § 4751B(d)(2)(A)
		≥ 1	Class C Felony § 4753(2)	"	Class B Felony § 4751B(d)(2)(A)
Tier 2 or Tier 3	All Substances	0	Class C Felony § 4753(1)	Class B Felony § 4751B(d)(1)(A)	"
		≥ 1	Class B Felony § 4752(2)	"	"
Tier 4 or Tier 5	All Substances	≥ 0	Class B Felony § 4752(1)	"	"

REVISED TITLE 16 OFFENSES BY SECTION NUMBER

<u>16 DEL. C. §:</u>	<u>OFFENSE:</u>	<u>NO PRIOR CONVICTIONS:</u>	<u>ONE PRIOR:</u>	<u>TWO OR MORE PRIORS:</u>
4752	(1): Deliver / Mfg. Tier 4 or Tier 5	Class B Felony	"	"
	(2): Deliver / Mfg. Tier 2 or Tier 3 + Aggravator	Class B Felony	"	"
	(3): Poss. Tier 5	Class B Felony	"	"
	(4): Poss. Tier 3 or Tier 4 + Aggravator	Class B Felony	"	"
	(5): Poss. Tier 2 + 2x Aggravators	Class B Felony	"	"
4753	(1): Deliver / Mfg. Tier 2 or Tier 3	Class C Felony	Class B Felony	"
	(2): Deliver / Mfg. No Tier or Tier 1 + Aggravator	Class C Felony	"	Class B Felony
	(3): Poss. Tier 4	Class C Felony	Class B Felony	"
	(4): Poss. Tier 2 + Aggravator	Class C Felony	Class B Felony	"

<u>16 DEL. C. §:</u>	<u>OFFENSE:</u>	<u>NO PRIOR CONVICTIONS:</u>	<u>ONE PRIOR:</u>	<u>TWO OR MORE PRIORS:</u>
	(5): Poss. Tier 1 + 2x Aggravators	Class C Felony	"	"
4754	(1): Deliver / Mfg. No Tier or Tier 1	Class D Felony	Class C Felony	Class B Felony
	(2): Poss. Tier 3	Class D Felony	Class B Felony	"
	(3): Poss. Tier 1 + Aggravator	Class D Felony	Class C Felony	"
4755	Poss. Tier 2	Class E Felony	Class C Felony	Class B Felony
4756	Poss. Tier 1	Class F Felony	Class D Felony	Class C Felony
4757	(a)(3) Unlawfully Obtaining Poss. of a Controlled Substance or Prescription Drug	Class F Felony	Class D Felony	Class C Felony
	(a)(6) Unlawfully Obtaining Possession of a Controlled Substance or Prescription Drug by Theft	Class F Felony	Class D Felony	Class C Felony
	(a)(7): Admin. of Steroids for Performance	Class F Felony	"	"
	(c)(1): Solicitation of Multiple Prescription Drug Crimes	Class C Felony	Class B Felony	"
	(c)(2): Solicitation of Multiple Prescription Drug Crimes + Aggravator	Class B Felony	"	"
4758	(a): Deliver / Mfg. Counterfeit or Purported Ctrl. Sub.	Class E Felony	"	"
4760	Maint. a Drug Property	Class F Felony	"	"
4761	(a): Illegal Poss. of Non-Ctrl. Prescription Drug	Unclass. Misd.	Class B Misd.	"
	(b): Illegal Poss. of Non-Ctrl. Prescription Drug + Aggravator	Class B Misd.	"	"
	(c): Illegal Poss. & Deliver of Non-Ctrl. Prescription Drug	Class G Felony	Class F Felony	"
	(d): Illegal Poss. & Deliver of Non-Ctrl. Prescription Drug + Aggravator	Class F Felony	"	"
4763	(b): Poss. / Consume Ctrl. Sub. Not Marijuana	Class B Misd.	Class A Misd.	"
	(c): Poss. / Consume Ctrl. Sub.	Class A Misd.	"	"

<u>16 DEL. C. §:</u>	<u>OFFENSE:</u>	<u>NO PRIOR CONVICTIONS:</u>	<u>ONE PRIOR:</u>	<u>TWO OR MORE PRIORS:</u>
	Not Marijuana + Aggravator			
4764	(a): Poss. / Consume Marijuana + Aggravator	Class B Misd.	"	"
	(b): Poss. / Consume Marijuana	Unclass Misd.; Fine ≤ \$575 & Imprisoned ≤ 3 months	Class B Misd.	"
4774	(a): Use / Poss. w/Intent to Use Drug Paraphernalia	Class B Misd.	"	"

PENALTIES BY OFFENSE CLASSIFICATION

	<u>Offense Classification:</u>	<u>Penalties:</u>
Felonies	Class B	2 to ≤ 25 years @ Lvl. 5
	Class C	≤ 15 years @ Lvl. 5
	Class D	≤ 8 years @ Lvl. 5
	Class E	≤ 5 years @ Lvl. 5
	Class F	≤ 3 years @ Lvl. 5
	Class G	≤ 2 years @ Lvl. 5
Misdemeanors	Class A	≤ 1 year @ Lvl. 5 and ≤ \$2,300 fine
	Class B	≤ 6 months @ Lvl. 5 and ≤ \$1,150 fine
	Unclassified	≤ 30 days @ Lvl. 5 and ≤ \$575 fine; unless otherwise defined by statute (e.g. § 4764(b))
Additional Penalties	All Violations of 16 DEL. C. §§ 4752-4764 (2011)	6 mo. license suspension

SENTAC CONTROLLED SUBSTANCE "SUPER WEIGHTS"

<u>SUBSTANCE</u>	<u>4-10 YEARS</u>	<u>6-12 YEARS</u>	<u>8-15 YEARS</u>
Cocaine	≥100g	≥250g	≥500g
Morphine / Opium / Heroin	≥20g	≥50g	≥100g
Marijuana	≥15,000g (33 lbs.)	≥37,500g (83 lbs.)	≥75,000g (165 lbs.)
Methamphetamine	≥100g	≥250g	≥500g
Amphetamine	≥100g	≥250g	≥500g
PCP	≥100g	≥250g	≥500g
LSD	≥50 ml or ≥500 doses	≥125ml or ≥1,250 doses	≥250 ml or ≥ 2,500 doses
Designer Drug	≥50 ml or ≥50 g or ≥250 doses	≥125ml or ≥125g or ≥625 doses	≥250 ml or ≥250g or ≥1,250 doses
Ecstasy (MDMA)	≥50 ml or ≥50 g or ≥250 doses	≥125ml or ≥125G or ≥625 doses	≥250 ml or ≥250g or ≥1,250 doses
Prescription Drug: Narcotic Schedule II or III	≥30g or ≥300 doses	≥75g or ≥750 doses	≥150g or ≥1,500 doses

C. § 4701(14) (2011).

AGGRAVATING AND MITIGATING FACTORS

The standard sentence range is presumed to be appropriate for the typical criminal case. The court may impose a sentence outside the standard sentence range for that offense if it finds that there are substantial and compelling reasons justifying an exceptional sentence.

The following aggravating and mitigating circumstances for exceptional sentences are provided as examples and are not intended to be exclusive reasons for departure. An aggravating or mitigating circumstance, whether listed below or not, shall only apply if it does not reflect the statutory language defining the current offense, or constitute an element thereof.

When an exceptional sentence is decreed, the governing factor(s) leading to the exceptional sentence must be stated for the record, and should be identified in the sentencing order or on the sentencing worksheet.

Aggravating Factors:

- A1 Excessive Cruelty
- A2 Prior Violent Criminal Conduct
- A3 Repetitive Criminal Conduct
- A4 Need for Correctional Treatment
- A5 Undue Depreciation of Offense
- A6 Major Economic Offense or Series of Offenses
- A7 Prior Abuse of Victim
- A8 Custody Status at Time of Offense
- A9 Lack of Remorse
- A10 Betrayal of Public Trust
- A11 Supervision to Monitor Restitution
- A12 Lack of Amenability
- A13 Vulnerability of Victim
- A14 Statutory Aggravation
- A15 Statutory Habitual Offender
- A16 Child Domestic Violence Victim
- A17 Offense Against a Child
- A18 Sentenced to Time Already Served Only

Mitigating Factors:

- M1 Victim Involvement
- M2 Voluntary Redress or Treatment
- M3 Under Duress or Compulsion
- M4 Inducement By Others
- M5 Physical/Mental Impairment
- M6 Concern for Victim by Non-Principal
- M7 No Prior Convictions
- M8 Treatment Need exceeds Need for Punishment
- M9 Could Lose Employment
- M10 Statutory Mitigation
- M11 Assistance to Prosecution
- M12 Mental Retardation
- M13 Other

Description of AGGRAVATING FACTORS For Exceptional Sentences

Violent Felonies Only:

EXCESSIVE CRUELTY

- a. Those facts surrounding the commission of a violent felony which demonstrate such a callousness and cruelty towards the victim as to shock the conscience of the Court.
- b. Allowable Penalty: Up to the statutory maximum for the instant offense.

PRIOR VIOLENT CRIMINAL CONDUCT

- a. Defendant has demonstrated, by his prior criminal history, a propensity for violent criminal conduct. (SEE POLICY NO. 4)
- b. Recommended Penalties:
 1. With two or more prior, separate violent felonies --Up to the statutory maximum.
 2. With one prior violent felony -- up to 50% of the statutory maximum.

Summary: Standard Prior History Categories for Violent Felonies

Category	Factor	Fel A	Fel B	Fel C	Fel D	Fel E	Fel F	Fel G
A	One or less prior felonies	Presumptive Sentence						
B	While on release or pending trial/sentencing	Level V for up to the time shown below:						
		25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
C	Two or more prior felonies	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
D	One prior violent felony	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
E	Two or more prior violent felonies	Life	25 yrs	15 yrs	8 yrs	5 yrs	3 yrs	2 yrs
F	Excessive Cruelty	Life	25 yrs	15 yrs	8 yrs	5 yrs	3 yrs	2 yrs

If violent crime is a secondary offense, use up to the presumptive sentence.

Aggravated Prior History Sentences at Level V for Nonviolent Felonies

H	Repetitive criminal history	NA	NA	24 months	Up this number of months:			
					24	15	9	6
J	Lack of amenability to lesser sanctions	NA	NA	24 months	Up to this number of months:			
					24	15	9	6

If nonviolent crime is a secondary offense, use the nonaggravated presumptive sentence.

Any Offense:

REPETITIVE CRIMINAL CONDUCT

Definition: Repetitive Criminal Conduct is conviction or adjudication for the same or similar offense on two or more previous, separate occasions. (SEE POLICY NO. 16)

NEED FOR CORRECTIONAL TREATMENT

The defendant is in need of correctional treatment which can be most effectively provided if he is placed in total confinement.

UNDUE DEPRECIATION OF OFFENSE

It would unduly depreciate the seriousness of the offense to impose a sentence of other than total confinement.

MAJOR ECONOMIC OFFENSE OR SERIES OF OFFENSES:

Identified by a consideration of any of the following factors:

- a. The offense involved multiple victims or multiple incidents per victim;
- b. The offense involved attempted or actual monetary loss substantially greater than typical for the offense;
- c. The offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time;
- d. The defendant used his/her position of trust, confidence or fiduciary responsibility to facilitate the offense.

PRIOR ABUSE OF VICTIM:

On prior occasions, the defendant has harassed, threatened, or physically abused the victim of the current offense.

CUSTODY STATUS AT TIME OF OFFENSE:

The offender was on bail, early release from incarceration, or was serving a sentence in other than Level V at the time the offense was committed.

LACK OF REMORSE

The offender has demonstrated a total lack of remorse or acceptance of responsibility with regard to the offense.

BETRAYAL OF PUBLIC TRUST

The offender, in attempting to gain, or while holding, public office by appointment or election, betrayed the Public Trust by his or her unlawful conduct.

SUPERVISION TO MONITOR RESTITUTION

A long period of supervision is necessary to monitor the offender's restitution responsibilities. Penalty Note: Applicable to sentences involving less than Level V time only.

LACK OF AMENABILITY

The defendant has demonstrated a lack of amenability to lesser restrictive sanctions through violation of a prior period of probation, or a failure to meet the conditions of a prior or current period of probation.

VULNERABILITY OF VICTIM

The Defendant knew, or should have known, that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

STATUTORY AGGRAVATION

The current offense carries with it a statutory minimum mandatory period of incarceration which exceeds the sentencing guidelines.

STATUTORY HABITUAL OFFENDER

The Court, on motion, determined the defendant to be an habitual offender under the provisions of 11 Del.C., s4214, thus calling for a sentence of incarceration which exceeds the sentencing guidelines.

CHILD DOMESTIC VIOLENCE VICTIM

The person who is a victim in domestic violence is a child.

OFFENSE AGAINST A CHILD

The victim in the offense was a child under 16 years old.

Description of MITIGATING FACTORS for Exceptional Sentences
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VICTIM INVOLVEMENT:

To a significant degree, the victim was an initiator, willing participant, aggressor, or instigator of the incident.

VOLUNTARY REDRESS OR TREATMENT:

Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained, or, before detection, he voluntarily sought professional help for drug/alcohol treatment, or for any other recognized compulsive behavioral disorders related to the offense.

UNDER DURESS OR COMPULSION:

The defendant committed the crime under duress, coercion, emotional distress, threat or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

INDUCEMENT BY OTHERS:

The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

PHYSICAL/MENTAL IMPAIRMENT:

The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this circumstance.

CONCERN FOR VICTIM BY NON-PRINCIPAL:

The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

NO PRIOR CONVICTIONS**TREATMENT NEED EXCEEDS NEED FOR PUNISHMENT:**

The offender is in greater need of an available treatment program than of punishment through incarceration.

COULD LOSE EMPLOYMENT:

The offender is gainfully employed and will more than likely lose his/her job if the sentencing standard is imposed.

STATUTORY MITIGATION**ASSISTANCE TO PROSECUTION:**

Defendant rendered substantial assistance to Authorities in the investigation and/or prosecution of this or other crimes.

MENTAL RETARDATION

- a. Defendant is "significantly sub average in general intellectual function" (usually interpreted as an IQ score of 70 or less); AND
- b. "has deficits in adaptive behavior" (has insufficient life skills to get along without constant assistance from others); AND
- c. "manifested the above handicaps during the developmental period". (usually interpreted as having experienced the onset of handicap at the age of 21 or younger).

QUALIFYING UNDERLYING OFFENSES FOR TITLE 11 SECTION 1105: Crime Against a Vulnerable Adult:

Title 11:

Section 601.	Offensive touching
Section 602(a)	Menacing
Section 602(b)	Aggravated Menacing
Section 603	Reckless endangering in the second degree
Section 604	Reckless endangering in the first degree
Section 605	Abuse of a pregnant female in the second degree
Section 606	Abuse of a pregnant female in the first degree
Section 611	Assault in the third degree
Section 612	Assault in the second degree
Section 621	Terroristic threatening
Section 622	Hoax device
Section 625	Unlawfully administering drugs
Section 626	Unlawfully administering controlled substance or narcotic drugs
Section 645	Promoting suicide
Section 763	Sexual harassment
Section 764	Indecent exposure in the second degree
Section 766	Incest
Section 767	Unlawful sexual contact in the third degree
Section 769	Unlawful sexual contact in the first degree
Section 770	Rape in the fourth degree
Section 776	Sexual extortion
Section 780	Female genital mutilation
Section 781	Unlawful imprisonment in the second degree
Section 782	Unlawful imprisonment in the first degree
Section 783	Kidnapping in the second degree
Section 791	Acts constituting coercion
Section 803	Criminal mischief
Section 825	Burglary in the second degree
Section 831	Robbery in the second degree
Section 835	Carjacking in the second degree
Section 841	Theft, except subsection (c)(3)b.
Section 841A	Theft of a motor vehicle
Section 842	Theft; lost or mislaid property
Section 843	Theft; false pretense
Section 844	Theft; false promise
Section 846	Extortion
Section 848	Misapplication of property
Section 853	Unauthorized use of a vehicle
Section 854	Identity theft
Section 861	Forgery
Section 903	Unlawful use of credit card
Section 909	Securing execution of documents by deception
Section 914	Use of consumer identification information
Section 916	Home improvement fraud
Section 917	New home construction fraud, except (d)(3)
Section 1001	Bigamy
Section 1311	Harassment
Section 1312	Stalking, except (d)(1) and (d)(2)

Section 1335	Violation of privacy
Section 1339	Adulteration
Section 1451	Theft of a firearm

Title 6:

Section 7322	Securities fraud
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SUBSTANTIAL ASSISTANCE

Title 11 Section 4220. Modification, suspension or reduction of sentence for substantial assistance.

(a) The Attorney General may move the sentencing court to modify, reduce or suspend the sentence of any person who is convicted of any crime or offense specified in this Code, and who provides substantial assistance in the identification, arrest or prosecution of any other person for a crime or offense specified in this Code, in the laws of the United States, or any other state or territory of the United States.

(c) The provisions of Sections 4204(d) or 4217 of this Title, any court rule or any other provision of law to the contrary notwithstanding, a judge of the Court that is imposing or that has imposed a sentence, upon hearing a motion filed pursuant to subsection (a) of this section, may modify, reduce or suspend that sentence, including any minimum mandatory, or a portion thereof, if the Court finds that the person rendered such substantial assistance.

SERIOUS MEDICAL ILLNESS, INJURY, OR INFIRMITY

Title 11 Section 4221. Modification, deferral, suspension or reduction of sentence for serious medical illness, injury, or infirmity.

Notwithstanding any provision of law to the contrary, a Court may modify, defer, suspend or reduce a minimum or mandatory sentence of one year or less, or a portion thereof, required, where the court finds by clear and convincing evidence, or by stipulation of the State, that the person to be sentenced suffers from a serious medical illness, injury or infirmity with continuing treatment needs which make incarceration inappropriate and that such person does not constitute a substantial risk to the community.

EXCEPTIONAL SENTENCES

Special Categories:

Domestic Violence

The particular nature of criminal charges involving domestic violence may be considered as deserving of aggravated punishment, for example, those cases where there have been repeated incidences prior to the first formal charge in Court, and those cases where children the witnesses or victims of domestic violence. If aggravating circumstances are present, the following recommendations are presented below. If the guidelines in this category are used, the sentencing order/worksheet must identify the charge as "Domestic Violence Involved".

Class A Misdemeanors

Statutory Range - 0 To 1 Years

11-603	Reckless Endangering 2nd Degree
11-611	Assault 3rd Degree
11-621	Terroristic Threatening
11-766	Incest
11-767	Unlawful Sexual Contact 3rd Degree
11-781	Unlawful Imprisonment 2nd Degree
11-785	Interference with Custody
11-791	Coercion
11-1101	Abandonment of Child
11-1102	Endangering Welfare of Child
11-1271A	Criminal Contempt: DV Protection Order
11-1311	Harassment

Presumptive Sentence	Level	Time
1st Offense	V	Up To 1 Month
2nd Offense w/in 2 years	V	Up to 2 Months
3rd Offense w/in 5 years	V	Up To 3 Months

Unclassified Misdemeanors

Statutory Range - 0 to 30 days

		Presumptive Sentence	Level	Time
11-601	Offensive Touching	Any offense	V	Up To 1 month
11-602	Menacing			
11-763	Sexual Harassment			
11-1301	Disorderly Conduct			

Enhanced Penalties applicable when:

Children are present during the crime OR are victims of the offense against a co-defendant if a conspirator was under the age of 14 and the codefendant was 4 or more years older than the child at the time of the crime. (Enhanced penalty for ANY crime)

Enhanced Presumptive Sentence:	Level	Time
Any Non-Violent Felony G	II	12 months or more
Misdemeanor Class A or B:		
1st Offense	V	1 to 2 months
2nd Offense in 2 years	V	2 to 3 months
3rd Offense in 5 years	V	3 or more months
Any Unclassified Misdemeanor	V	1 or more months

EXCEPTIONAL SENTENCES

Special Categories:

Escape

Due to the peculiar nature of escape charges, which may be considered as deserving aggravated punishment even though they are primarily non-violent in nature, the following recommendations are presented:

11-1251	Escape 3rd Degree	0 to 1 m @ Level V
11-1252	Escape 2nd Degree	0 to 3 m @ Level V
11-1253	Escape After Conviction (Class D Felony Violent)	0 to 2 yrs @ Level V
11-1253	Escape After Conviction (Force/Threat/DW)(Class C Fel Violent)	1 to 3 yrs @ Level V
11-1253	Escape After Conviction (Injury)(Class B Felony Violent)	2 to 5 yrs @ Level V

ESCAPE FROM LEVEL IV FACILITY

(Applies to all Half-Way House and Residential Treatment facilities)

1st offense	Level V for 30 days (Title 11, §4204(k))
2nd offense	Level V for 90 days (Title 11, §4204(k))
3rd & subsequent offense	Level V for 180 days (Title 11, §4204(k))

Presumptive penalty for a first escape from Home Confinement is a lateral assignment to a Half-way House facility.

Sentencing Orders and worksheets should reflect the status as a Level IV Escape.

Policy 31: Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge. Persons charged with such escapes should not be released on bond.

Exceptional Sentences:

Habitual Criminal

§4214(a)- 3 Prior Felony Convictions

- If an offender has been convicted three times of a felony, other than those mentioned in subsection (b), and is thereafter convicted of a subsequent felony, that offender is declared to be an habitual criminal.
- The Court May, In Its Discretion, Sentence the Offender to any sentence up to life imprisonment.
- The Court Shall Sentence the Offender to a minimum sentence of the statutory maximum for the fourth or subsequent felony when it is a Title 11 Violent Felony as defined in §4201.
- A life sentence under this section shall be served in its entirety at a full custodial Level V institutional setting and is not subject to Suspension, Probation, Parole, Earned Good Time or any other reduction.
- A sentence for less than life under this section shall be served in its entirety at a full custodial Level V institutional setting and is not subject to Suspension, Probation, or Parole except the provisions contained within §§4205(h)²¹, 4217,²² 4381²³ and 4382²⁴ of this title.

§4214(b)- 2 Prior Specifically Enumerated Felony Convictions

- If an offender has been convicted two times of a specifically enumerated felony or its equivalent or an attempt of the same, and who shall be subsequently convicted of another of the enumerated felonies, that offender is declared to be an habitual criminal.
- The Court Shall Sentence the Offender to Life unless the sentence of Death has been imposed.
- A life sentence under this section shall be served in its entirety at a full custodial Level V institutional setting without benefit of Probation, Parole, Earned Good Time or any other reduction.
- A life sentence under this section shall not be subject to the Probation or Parole provisions of Chapter 43 of this Title.

11-606	Abuse of a Pregnant Female 1st Degree
11-613	Assault 1st Degree
11-615	Assault by Abuse
11-632	Manslaughter
11-635	Murder 2nd Degree
11-636	Murder 1st Degree
11-763	Rape 2nd Degree

²¹ Title 11, §4205(h): D.O.C. may house inmates at a Level IV halfway house or work-release for the last 180d. of sentence.

²² Title 11, §4217: D.O.C. may apply to Parole Board who may approve and thereafter apply to Court for modification based on good cause, i.e. exceptional rehabilitation, serious illness or overcrowding.

²³ Title 11, §4381: Earned good time.

²⁴ Title 11, §4382: Forfeiture of good time.

11-764	Rape 1st Degree
11-766	Sodomy 1st Degree
11-771	Rape 3rd Degree
11-772	Rape 2nd Degree
11-773	Rape 1st Degree
11-778(a)(b)(c)	Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree
11-783	Kidnapping 2nd Degree
11-783A	Kidnapping 1st Degree
11-803	Arson 1st Degree
11-825	Burglary 2nd Degree
11-826	Burglary 1st Degree
11-832	Robbery 1st Degree
11-836	Carjacking 1st Degree
16-4751	Manufacture/Deliver/PWID Narcotic
16-4752	Manufacture/Deliver/PWID Nonnarcotic Controlled Substance
16-4752A	Unlawful Delivery/Attempt Noncontrolled Substance
16-4753A	Trafficking in Marijuana, Cocaine, Illegal Drugs or Methamphetamine

- (c) A person who was convicted prior to July 1, 1973 of any of the hereinafter enumerated crimes shall be considered an habitual criminal as described in subsection (b) and shall be sentenced accordingly:

Arson 1st Degree	Kidnapping
Burglary 1st Degree	Abducting Child Under 12 y.o.a.
Burglary 2nd Degree	Kidnapping Child Under 15 y.o.a.
Murder 1st Degree	Maiming by Lying in Wait
Murder 2nd Degree	Rape
Manslaughter (except involuntary)	Assault w/Intent to Commit Rape
Manslaughter by Motor Vehicle	Robbery
Assault w/Intent to Murder	Assault w/Intent to Commit Robbery
Poisoning w/Intent to Murder	

VIOLATION OF PROBATION SENTENCING POLICY

When a violation of probation hearing is held and determination is made that the offender is guilty of the violation and probation is to be revoked, it is presumed that the offender may move up only one SENTAC level from his/her current level.

AGGRAVATING CIRCUMSTANCES

An offender may have his/her level of supervision raised more than one level if any of the following aggravating circumstances exists:

- A. Conviction of a new offense which was a felony, a violent misdemeanor, or an offense requiring a mandatory sentence.
- B. The violation is a violation of a special treatment condition , e.g., offender willfully refuses to attend the ordered program and, as a result of such refusal, poses a substantial threat to the community or himself. Confinement in this instance should be short-term and could consist of either a Level IV (quasi-incarceration) or a Level V (incarceration), situation until treatment is arranged.
- C. The offender has demonstrated willful failure to make court-ordered payments, and no other alternatives are possible, or those alternatives would depreciate the seriousness of the offense.
- D. The offender is found to be in possession of a weapon, leading to the violation, and the offender has a past history of violence, drug trafficking or weapons violations.
- E. The behavior of the offender represents an immediate threat to the community or an identified victim.
- F. The behavior of the offender is repetitive and flagrantly defies the authority of the court.

Length of Level V Sentences - SENTAC Standard

When a period of incarceration is determined to be the sanction of choice for a violation of probation, a Level V sanction should be in accordance with the current SENTAC standard presumptive sentence for the original crime for which the probation is being served. If the presumptive sentence is less than level V, the sentence for violation of probation should be UP TO 25% of the statutory maximum.

Effective June 30, 1990, all Violation of Probation sentences must be designated as to whether they are "Truth in Sentencing" or "Non TIS" sentences. A defendant who had an original non-TIS sentence and is violated may not be given a TIS sentence for the violation, unless he specifically agrees thereto, and the sentence is given in relation to TIS guidelines. Designation is imperative so that DOC can maintain proper records on the time to be served, goodtime credits, and parole eligibility.

1. Sentencing orders (and worksheet forms) should refer to all violations as "Violation of Level ____ ", where the blank contains the current level designation.
2. In addition to the above designation, all violation orders, regardless of specific format, should contain the following information:
 - Client name, Effective date of sentence, Original offense, Type of action: i.e. terminated, continued, modified, or revoked as defined above. New sentence Level(s) and time(s), TIS or NON-TIS status, Aggravating factor(s): if necessary due to a two- level (or more) increase, or a longer than standard sentence length at Level V.

Glossary of Violation of Probation Terms:

Continuation

An order may be entered continuing a probationer on probation where there has been a finding of a violation of probation or a finding that there has been no established violation of probation, and the same conditions remain in place after the finding is entered.

Discharge as Unimproved

An order may be entered discharging a probationer as unimproved upon recommendation of the probation officer or at the discretion of the Court, when the Court determines that continued supervision of the probationer is unlikely to have a beneficial effect, even though one or more terms of the probation order have not been fulfilled.

Modification

An order modifying probation may be ordered when the Court finds that a violation has occurred and the probationer should be kept at the same level or placed at a lower level with additional, more restrictive requirements or altered requirements to more realistically assist the management of the supervision of the probationer.

Probation

As referenced in this section, shall be any sentence of supervision at a level less than incarceration at Level V which is imposed in lieu of, or in addition to, any sentence to said Level V as a result of conviction for any criminal offense.

Repetitive Behavior

The offender persists, after notice, in actions which constitute a pattern of behavior which repeats a past record of non-amenability to community sanctions.

Revocation

An order revoking probation may be entered when it is the intention of the Court to raise the level of intensity of supervision after finding that probation has been violated.

Substantial Risk

The threat of repetitive violations or causing physical injury to self or others is high.

Willful Failure to Pay

A failure to pay a monetary obligation despite the availability of resources with which to pay the obligation, or the refusal to take steps to obtain the resources to pay the obligation.

WORK RELEASE POLICY (Department of Correction/Bureau of Prisons)

A program permitting an inmate of proper custody status to work in the community at paid employment. The inmate is still assigned to a Halfway House/Work Release Center when not working or participating in extracurricular programs. Inmates meeting the following standards may be given consideration.

Inmates within 36 months to short-time release date and 9 months to parole eligibility. (Non- TIS offenders only.)

Inmates convicted of a violent crime against person(s) and served more than a year at Level V must have a mental evaluation prior to being considered for the program.

MDT must review and recommend placement.

Inmates with minor open charges can be approved and will be expected to clear the charges; i.e., motor vehicle offenses.

Inmates serving a sentence for a third DUI offense occurring within 5 years from a prior offense are not eligible for work release during the first 3 months of the sentence imposed.

Inmates serving a sentence for a fourth or subsequent offense occurring any time after 3 prior offenses are not eligible for work release during the first 6 months of the original sentence imposed.

Truth In Sentencing Inmates

1. Sentenced to one year or more under Truth in Sentencing if they are in the last 180 days of their sentence.
2. Truth in Sentencing inmates sentenced to less than 1 year provided, however, the first 5 days be served at Level V, may be classified to work release, unless the court states otherwise.

Inmates serving a Level V sentence with a Level IV sentence to follow.

Inmates must not have had any Class I or major conduct offenses within the last 6 months prior to consideration.

Inmates in the following categories **will not** be given consideration in this program due to either statutory or departmental/bureau policy.

1. Class A Felons, those committed as a Habitual Criminal or those previously convicted of two or more offenses listed herein on page 8 or 9 until within six months of the date of release from custody.
2. Any offender convicted of a sex offense, including but not limited to offenders convicted of any of the following offenses: Unlawful sexual contact in the First or Second Degree, Unlawful sexual penetration in the First, Second, or Third Degree, Unlawful sexual intercourse in the First, Second, or Third Degree, Sexual Extortion, Continuous sexual abuse of a child, Dangerous crimes against a child, Sexual exploitation of a child, Unlawfully dealing in material depicting a child in a prohibited sexual act, or Subsequent convictions of Sec. 1108 or Sec. 1109.
3. Inmates with detainer, unless the detaining authority has given specific written approval for work release.
4. Inmates serving a sentence under 4204K, unless the sentencing judge specifies that work release is allowed.
5. Inmates convicted of escape after conviction or escape 2nd and are never eligible for work release.

Inmates serving minimum mandatory sentences for trafficking are not eligible until the mandatory portion of their sentence is completed. Those serving minimum mandatory sentences for other offenses are eligible after serving 50%t of the minimum mandatory, unless minimum term is set by statute. (Non TIS offenders only.)

Conditions of Supervision

1. You must not commit a new criminal offense or moving motor vehicle offense during the supervision period.
2. You must report any new arrest, conviction, or police contact within 72 hours to your Supervising Officer.
3. You must report to your Supervising Officer at such times and places as directed, and permit the Probation/Parole Officer to enter your home and/or visit places of employment.
4. You must have authorization from your Supervising Officer to leave the State of Delaware or your approved state of residence.
5. You must report any changes of residence and/or employment within 72 hours to your Supervising Officer.
6. You must have written approval from your Supervising Officer to own, possess, or be in control of any firearm or deadly weapon. (NOTE: Del. Code Title 11, Section 1448 prohibits purchase, possession, ownership, or control of any deadly weapon by persons convicted of a felony, crime of violence, drug offense, or commitment for a mental disorder.)
7. You are not to possess or consume a controlled substance or other dangerous drugs unless prescribed lawfully. You are subject to random testing as directed by your Supervising Officer.
8. You must pay a supervision fee as required by State Law in accordance with a schedule as established by the Department of Correction.
 - a. You must comply with any Special Conditions imposed at any time by your Supervising Officer, the Court and/or the Board of Parole.
 - b. You must not quit a job, training program, or school without prior approval of your Supervising Officer.
9. You must be employed full-time or active in job training or school on a full-time basis. If not, you must attend a Job Search Program or perform Community Service on a schedule established by the Supervising Officer.
10. You must participate in 0-35 hours of community service each week as directed by your Supervising Officer.
11. You must abide by a curfew established by your Supervising Officer.

Sex Offender Additional Standard Conditions of Supervision

The following additional standard conditions of probation may be required by the Department of Correction in the supervision of defendants who have been convicted of a sex offense or those whose criminal record reflects a prior conviction of such offenses. The Commission expects the Department of Correction to review the needs of each individual defendant and impose only those additional conditions needed to appropriately supervise the defendant.

1. Participate in sex offender assessment, evaluation, and treatment as determined by the Department of Correction. The offenders will be financially responsible for all examinations and treatment unless the Department of Correction finds the offender is financially unable to pay.
2. Prohibit access or possession of sexually explicit and/or obscene material unless approved by the Probation Officer.
3. Comply with all statutory requirements imposed upon individuals convicted of a sex offense including but not limited to compliance with 11 Del. Code Section 8510 requiring the submission of photographs, fingerprints and identification, sex offender registration (11 Del. Code Section 4120), community notification (11 Del. Code Section 4121), and DNA collection (29 Del. Code Section 4713) and limitations regarding contact with school zones (11 Del. Code Section 1112).
4. Prohibit contact or residing with children under the age of 18 unless approved by the Probation Officer.
5. Prohibit access, possession or control over or use of a computer device, modem or network interface device. Any device or storage medium of an offender whose use has been approved by the Department of Correction is subject to random examination by the Probation Officer to determine compliance with this requirement. Using a computer modem or network interface device for any purpose which might further sexual activity is strictly prohibited. If violation of this provision is found, the Department of Correction may seize the computer, related equipment and storage devices.
6. To require submission to polygraph testing to assist in the treatment and supervision of the offender. The

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- failure of a polygraph test alone may not be a basis to violate the offender's probation.
7. Require no contact with the victim of the crime unless otherwise approved by the Probation Officer.

LEGISLATIVE UPDATE

Compilation of changes affecting the Benchbook from the 146th General Assembly listed by Title. The changes herein listed have also been included under the Classifications and Notations and take into account all House and Senate amendments and substitutions.

TITLE 11

HB 19 - Synopsis

This Act is the product of the 'Drug Law Revisions Committee.' This Act repeals a significant portion of the existing criminal drug laws. In their place, this Act creates three main drug crimes – Drug Dealing (that is, delivery or manufacture, or possession with intent to deliver or manufacture); Aggravated Possession (that is, possession of amounts generally indicative of drug dealing but where drug dealing need not be proved); and Possession. Each of the crimes would have multiple levels of seriousness depending upon a number of aggravating factors, which would include proximity to a school or a park, presence in a vehicle, prior record, reaching a threshold weight of drugs, involvement of children in the offense, or resisting arrest with force or violence. None of the crimes would equate 'possession' and 'possession with intent to deliver' as do the present Possession within 1000 Feet of a School, Possession within 300 Feet of a Park, and Maintaining a Dwelling or Vehicle.

HB 174 - Synopsis

This Act establishes a new crime, Vehicular Assault in the Third Degree, to cover situations where an individual causes injury to another person as a result of criminally negligent driving. The Act strengthens criminal penalties for Vehicular Assault in the Second Degree, Vehicular Homicide in the Second Degree, Vehicular Homicide in the First Degree and Criminally Negligent Homicide. This Act also brings into accord the penalties for Vehicular Homicide in the Second Degree and Criminally Negligent Homicide. These amendments provide sentencing courts wide latitude in crafting appropriate sentences for those who cause injury and death on Delaware roadways.

SB 29 - Synopsis

This Bill makes it illegal for individuals to possess firearms outside of their homes while under the influence of alcohol or drugs. Persons found guilty under this section shall be guilty of a class A misdemeanor for a first offense, and will have their permit to carry a concealed deadly weapon, if available, revoked. In addition, such persons will not be permitted to obtain another CDW permit for 5 years from the date of conviction for a first offense. Persons convicted of a second or subsequent offense shall be guilty of a class G felony.

SB 86 - Synopsis

This Bill creates a new crime of theft of property from a cemetery. The Bill categorizes that crime as a Class A misdemeanor.

§ 616. Gang participation.

(a) Definitions. -- The following terms shall have the following meaning as used in this section.

(1) "Criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as 1 of its primary activities the commission of one or more of the criminal acts enumerated in paragraph (a)(2) of this section, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(2) "Pattern of criminal gang activity" means the commission of attempted commission of, conspiracy to commit, solicitation of, or conviction of 2 or more of the following criminal offenses, provided that at least 1 of these offenses occurred after July 1, 2003, and that the last of those offenses occurred within 3 years after a prior offense, and provided that the offenses were committed on separate occasions, or by 2 or more persons:

- a. Assault, as defined in § 612 or § 613 of this title.
- b. Any criminal acts causing death as defined in §§ 632--636 of this title.
- c. Any criminal acts relating to sexual offenses defined in §§ 768--780 of this title.
- d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782--783A of this title.
- e. Any criminal acts of arson as defined in §§ 801--803 of this title.
- f. Any criminal acts relating to burglary which are defined in §§ 824--826 of this Title.
- g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.
- h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title, provided that such acts meet the requirements of felony offenses under said sections.
- i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the requirements of felony offenses under said sections.
- j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, § 1444, §§ 1447--1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.
- k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, 4754, 4755, 4756, 4757(c) of Title 16.

(b) Forbidden conduct. -- A person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who knowingly promotes, furthers or assists in any criminal conduct by members of that gang which would constitute a felony under Delaware law, shall be guilty of illegal gang participation. Illegal gang participation is a class F felony.

(c) Sentencing enhancements. --

(1) Any person who is convicted of a class E felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class D felony under § 4205(b)(4) of this title.

(2) Any person who is convicted of a class D felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class C felony under § 4205(b)(3) of this title.

(3) Any person who is convicted of a class C felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class B felony under § 4205(b)(2) of this title.

[74 Del. Laws, c. 115, § 1](#); [78 Del. Laws, c. 13, § 4](#);

§ 628. Vehicular assault in the third degree; class B misdemeanor.

A person is guilty of vehicular assault in the third degree when, while in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes physical injury to another person.

Vehicular assault in the third degree is a class B misdemeanor.

[78 Del. Laws, c. 168, § 2](#);

§ 628A. Vehicular assault in the second degree; class A misdemeanor.

A person is guilty of vehicular assault in the second degree when:

(1) While in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes serious physical injury to another person; or

(2) While in the course of driving or operating a motor vehicle and under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes physical injury to another person.

Vehicular assault in the second degree is a class A misdemeanor.

[63 Del. Laws, c. 88, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 333, § 5](#); [75 Del. Laws, c. 315, § 7](#); [78 Del. Laws, c. 168, §§ 1, 2](#);

§ 630. Vehicular homicide in the second degree; class D felony; minimum sentence; juvenile offenders.

(a) A person is guilty of vehicular homicide in the second degree when:

(1) While in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes the death of another person; or

(2) While in the course of driving or operating a motor vehicle, under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes the death of another person.

Vehicular homicide in the second degree is a class D felony.

(b) The minimum sentence required by paragraph (a)(2) of this section shall be 1 year, notwithstanding § 4205(b)(6) of this title. The minimum sentence shall not be subject to suspension, and no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first year of such sentence.

(c) Every person charged under this section after having reached their 16th birthday, shall be treated for purposes of trial or other disposition of the charge, including but not limited to sentencing, as an adult, notwithstanding any contrary provisions of statutes governing the Family Court, or any other state law, except that the mandatory minimum sentencing provisions of subsection (b) of this section and § 630A(b) of this title shall not apply to juveniles. Any such case involving a juvenile shall be subject to the transfer provisions of § 1011 of Title 10. Any period of incarceration imposed upon a juvenile by operation of this section shall be served in a juvenile correctional facility until the person attains their 18th birthday, at which time the person shall be transferred to the appropriate adult correctional institution or jail to serve any remaining portion of the sentence.

[63 Del. Laws, c. 88, § 3](#); [65 Del. Laws, c. 357, § 1](#); [67 Del. Laws, c. 130, § 8](#); [67 Del. Laws, c. 246, § 1](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 333, § 5](#); [75 Del. Laws, c. 315, § 7](#); [78 Del. Laws, c. 168, § 3](#);

§ 630A. Vehicular homicide in the first degree; class C felony; minimum sentence; juvenile offenders.

(a) A person is guilty of vehicular homicide in the first degree when while in the course of driving or operating a motor vehicle under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's criminally negligent driving or operation of said vehicle causes the death of another person.

Vehicular homicide in the first degree is a class C felony.

(b) The minimum sentence required by this section shall be 2 years, notwithstanding § 4205(b)(5) of this title. The minimum sentence shall not be subject to suspension, and no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first 18 months of such sentence.

(c) Every person charged under this section after having reached their 16th birthday, shall be treated for purposes of trial or other disposition of the charge, including but not limited to sentencing, as an adult, notwithstanding any contrary provisions of statutes governing the Family Court, or any other state law, except that the mandatory minimum sentencing provisions of subsection (b) of this section and § 630(b) of this title shall not apply to juveniles. Any such case involving a juvenile shall be subject to the transfer provisions of § 1011 of Title 10. Any period of incarceration imposed upon a juvenile by operation of this section shall be served in a juvenile correctional facility until the person attains their 18th birthday, at which time the person shall be transferred to the appropriate adult correctional institution or jail to serve any remaining portion of the sentence.

[63 Del. Laws, c. 88, § 4](#); [65 Del. Laws, c. 357, § 2](#); [67 Del. Laws, c. 130, § 8](#); [67 Del. Laws, c. 246, § 1](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 333, § 5](#); [75 Del. Laws, c. 315, § 7](#); [78 Del. Laws, c. 168, § 4](#);

§ 631. Criminally negligent homicide; class D felony.

A person is guilty of criminally negligent homicide when, with criminal negligence, the person causes the death of another person.

Criminally negligent homicide is a class D felony.

11 Del. C. 1953, § 631; 58 Del. Laws, c. 497, § 1; [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#); [78 Del. Laws, c. 168, § 5](#);

§ 813. Theft of property from a cemetery.

A person commits theft of property from a cemetery when, with the intent as prescribed in § 841 of this title, the person exercises control over flowers, burial mounds, mementos or any other property left by its owner in a cemetery for purposes of honoring the dead; provided, however, that this section shall not be applicable to employees of a cemetery who remove property from a grave site pursuant to cemetery regulations. Whoever commits theft of property from a cemetery shall be guilty of a class A misdemeanor.

[78 Del. Laws, c. 125, § 1](#);

§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties [Effective until fulfillment of 78 Del. Laws, c. 137, § 15]

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a handgun shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that

this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901(12) of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who co-habitated with the victim at the time of the offense; or by a person with a child in common with the victim; and

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

(10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is 1 of paragraphs (a)(1) through (a)(8) of this section, in which case it is a class D felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

- a. One year at Level V, if the person has previously been convicted of a violent felony;
- b. Three years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- c. Five years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

- a. Four years at Level V; or
- b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.
- d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction

of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Office of the Chief Medical Examiner and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

11 Del. C. 1953, § 1448; 58 Del. Laws, c. 497, § 1; [67 Del. Laws, c. 130, § 8](#); [68 Del. Laws, c. 422, § 1](#); [69 Del. Laws, c. 313, §§ 1, 2](#); [69 Del. Laws, c. 441, § 1](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 230, §§ 1-5](#); [71 Del. Laws, c. 358, §§ 1, 2](#); [72 Del. Laws, c. 61, §§ 1, 2](#); [74 Del. Laws, c. 106, § 7](#); [75 Del. Laws, c. 78, § 1](#); [76 Del. Laws, c. 99, § 1](#); [76 Del. Laws, c. 101, §§ 1-5](#); [78 Del. Laws, c. 13, §§ 5, 6](#); [78 Del. Laws, c. 135, §§ 6-8](#); [78 Del. Laws, c. 168, § 6](#);

§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties [Effective upon fulfillment of 78 Del. Laws, c. 137, § 15]

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A of this title;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a handgun shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901(12) of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who co-habitated with the victim at the time of the offense; or by a person with a child in common with the victim; and

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

(10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is 1 of paragraphs (a)(1) through (a)(8) of this section, in which case it is a class D felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

a. One year at Level V, if the person has previously been convicted of a violent felony;

b. Three years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Five years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

a. Four years at Level V; or

b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Office of the Chief Medical Examiner and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

11 Del. C. 1953, § 1448; 58 Del. Laws, c. 497, § 1; [67 Del. Laws, c. 130, § 8](#); [68 Del. Laws, c. 422, § 1](#); [69 Del. Laws, c. 313, §§ 1, 2](#); [69 Del. Laws, c. 441, § 1](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 230, §§ 1-5](#); [71 Del. Laws, c. 358, §§ 1, 2](#); [72 Del. Laws, c. 61, §§ 1, 2](#); [74 Del. Laws, c. 106, § 7](#); [75 Del. Laws, c. 78, § 1](#); [76 Del. Laws, c. 99, § 1](#); [76](#)

[Del. Laws, c. 101, §§ 1-5](#); [78 Del. Laws, c. 13, §§ 5, 6](#); [78 Del. Laws, c. 135, §§ 6-8](#); [78 Del. Laws, c. 137, § 5](#); [78 Del. Laws, c. 168, § 6](#);

§ 1460. Possession of firearm while under the influence.

(a) A person is guilty of possession of a firearm while under the influence of alcohol or drugs when the person possesses a firearm in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm was not readily operable, or that the person was not in possession of ammunition for the firearm. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Not readily operable" means that the firearm is disassembled, broken down, or stored in a manner to prevent its immediate use.

(2) "Possess," "possession" or "possesses" means that the person has the item under his or her dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

(3) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, restaurants, bars, taverns, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(4) "Under the influence of alcohol or drugs" means:

a. Having an amount of alcohol in a sample of the person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per 210 liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm in violation thereof, if such person's alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm; or

b. Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in § 4177(c)(8) of Title 21, or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity,

provided that no person shall be "under the influence of alcohol or drugs" for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person's blood to contain an amount of alcohol or drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

(c) A law-enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, possession of a firearm while under the influence is a class A misdemeanor.

(2) Possession of a firearm while under the influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for possession of a firearm while under the influence.

[78 Del. Laws, c. 136, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 4201. Transition provisions [Effective Sept. 1, 2011]

(a) Felonies are classified, for the purpose of sentence, into 7 categories:

- (1) Class A felonies;
- (2) Class B felonies;
- (3) Class C felonies;
- (4) Class D felonies;
- (5) Class E felonies;
- (6) Class F felonies;
- (7) Class G felonies.

(b) Any crime or offense which is designated as a felony but which is not specifically given a class shall be a class G felony and shall carry the sentence provided for said class felony.

(c) The following felonies shall be designated as violent felonies:

Title 11, Section Crime

513 Conspiracy First Degree

602 Aggravated Menacing

604 Reckless Endangering First Degree

605 Abuse of a Pregnant Female in the Second Degree

606 Abuse of a Pregnant Female in the First Degree

612 Assault in the Second Degree

613 Assault in the First Degree

614 Assault on a Sports Official

615 Assault by Abuse

617 Criminal Youth Gangs

629 Vehicular Assault in the First Degree

630 Vehicular Homicide in the Second Degree

630A Vehicular Homicide in the First Degree

631 Criminally Negligent Homicide

632 Manslaughter

633 Murder by Abuse or Neglect in the Second Degree

634 Murder by Abuse or Neglect in the First Degree

635 Murder in the Second Degree

636 Murder in the First Degree

645 Promoting Suicide

768 Unlawful Sexual Contact in the Second Degree

769 Unlawful Sexual Contact in the First Degree

770 Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree

771 Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree

772 Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree

773 Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree

774 Sexual Extortion

775 Bestiality

776 Continuous Sexual Abuse of Child

777 Dangerous Crime Against a Child

777A Sex Offender Unlawful Sexual Conduct Against a Child

778 Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree

778A Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree

782 Unlawful Imprisonment in the First Degree

783 Kidnapping in the Second Degree

783A Kidnapping in the First Degree

802 Arson in the Second Degree

803 Arson in the First Degree

825 Burglary in the Second Degree

826 Burglary in the First Degree

831 Robbery in the Second Degree

832 Robbery in the First Degree

835 Carjacking in the Second Degree

836 Carjacking in the First Degree

846 Extortion

1108 Sexual Exploitation of a Child

1109 Unlawfully Dealing in Child Pornography

1112A Sexual Solicitation of a Child

1250 Assault in the First Degree Against a Law-Enforcement Animal

1253 Escape After Conviction

1254 Assault in a Detention Facility

1256 Promoting Prison Contraband (Deadly Weapon)

1302 Riot

1304 Hate Crimes

1312 Stalking

1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices

1339 Adulteration (Causing Injury or Death)

1353 Promoting Prostitution in the First Degree

1442 Carrying a Concealed Deadly Weapon (Firearm Offense)

1444 Possessing a Destructive Weapon

1445 Unlawfully Dealing With a Dangerous Weapon

1447 Possessing a Deadly Weapon During the Commission of a Felony

1447A Possessing a Firearm during the Commission of a Felony

1448(e) Possession of a Deadly Weapon by Persons Prohibited

(Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).

1455 Engaging in a Firearms Transaction on Behalf of Another

(Subsequent Offense)

1449 Wearing Body Armor During the Commission of a Felony

1503 Racketeering

3533 Aggravated Act of Intimidation

Title 16,

Section Crime

1136 Abuse/Mistreatment/Neglect of a Patient

4751 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death

4752 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance

4752A Former Unlawful Delivery of a Noncontrolled Substance

4753A Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD, Designer Drugs or MDMA

4752 Drug Dealing - Aggravated Possession; Class B Felony

4753 Drug Dealing - Aggravated Possession; Class C Felony

4754 Drug Dealing - Aggravated Possession; Class D Felony

4755 Aggravated Possession; Class E Felony

4756 Aggravated Possession; Class F Felony

4761 Former Distribution to Minors

4761(c) Illegal Delivery of Prescription Drugs

and (d)

4774 Delivery of Drug Paraphernalia to a Minor

Title 31,

Section Crime

3913 Abuse/Neglect/Exploit/Mistreat an Infirm Adult

Any attempt to commit any felony designated in this subsection as a violent felony shall also be designated as a violent felony.

[67 Del. Laws, c. 130, § 6](#); [70 Del. Laws, c. 477, § 1](#); [71 Del. Laws, c. 285, § 14](#); [71 Del. Laws, c. 467, § 10](#); [72 Del. Laws, c. 34, § 5](#); [72 Del. Laws, c. 43, § 6](#); [72 Del. Laws, c. 197, § 7](#); [72 Del. Laws, c. 480, § 17](#); [74 Del. Laws, c. 106, § 8](#); [75 Del. Laws, c. 421, § 3\[2\]](#); [76 Del. Laws, c. 66, § 3](#); [76 Del. Laws, c. 343, § 5](#); [77 Del. Laws, c. 313, § 2](#); [77 Del. Laws, c. 318, § 13](#); [78 Del. Laws, c. 13, §§ 8-10](#);

§ 4214. Habitual criminal; life sentence [Effective Sept. 1, 2011]

(a) Any person who has been 3 times convicted of a felony, other than those which are specifically mentioned in subsection (b) of this section, under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony of this State is declared to be an habitual criminal, and the court in which such 4th or subsequent conviction is had, in imposing sentence, may in its discretion, impose a sentence of up to life imprisonment upon the person so convicted. Notwithstanding any provision of this title to the contrary, any person sentenced pursuant to this subsection shall receive a minimum sentence which shall not be less than the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal except that this minimum provision shall apply only when the 4th or subsequent felony is a Title 11 violent felony, as defined in § 4201(c) of this title. Notwithstanding any provision of this title to the contrary, any sentence of life imprisonment imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting without the benefit of probation, parole, earned good time or any other reduction. Notwithstanding any provision of this title to the contrary, any sentence of less than life imprisonment imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4217, 4381 and 4382 of this title.

(b) Any person who has been 2 times convicted of a felony or an attempt to commit a felony hereinafter specifically named, under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony hereinafter specifically named, or an attempt to commit such specific felony, is declared to be an habitual criminal, and the court in which such third or subsequent conviction is had, in imposing sentence, shall impose a life sentence upon the person so convicted unless the subsequent felony conviction requires or allows and results in the imposition of capital punishment. Such sentence shall not be subject to the probation or parole provisions of Chapter 43 of this title.

Such felonies shall be:

Section Crime

803 Arson in the first degree

826 Burglary in the first degree

825 Burglary in the second degree

636 Murder in the first degree

635 Murder in the second degree

632 Manslaughter

783 Kidnapping in the second degree

783A Kidnapping in the first degree

606 Abuse of a pregnant female in the first degree

613 Assault in the first degree

615 Assault by abuse

Former 763 Rape in the second degree

Former 764 Rape in the first degree

Former 766 Sodomy in the first degree

832 Robbery in the first degree

836 Carjacking in the first degree

Former 771 Unlawful sexual penetration in the second degree

Former 772 Unlawful sexual penetration in the first degree

Former 773 Sexual intercourse in the third degree

Former 774 Unlawful sexual intercourse in the second degree

Former 775 Unlawful sexual intercourse in the first degree

771 Rape in the third degree

772 Rape in the second degree

773 Rape in the first degree

778(1), (2) Sexual Abuse of a Child by a Person or (3) in a Position of Trust, Authority or Supervision in the First Degree

Title 16, Section Crime

Former 4751 Manufacture, delivery or possession with intent to manufacture or deliver a narcotic drug

Former 4752 Manufacture, delivery or possession with intent to manufacture or deliver nonnarcotic, controlled substance

Former 4752A Unlawful delivery or attempt to deliver noncontrolled substance

Former 4753A Trafficking in marijuana, cocaine, illegal drugs or methamphetamine.

4752 Drug Dealing - Aggravated Possession; Class B Felony

4753 Drug Dealing - Aggravated Possession; Class C Felony

4754 Drug Dealing - Aggravated Possession; Class D Felony

4755 Aggravated Possession; Class E Felony

Notwithstanding any provision of this title to the contrary, any sentence imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting without benefit of probation, parole, earned good time or any other reduction.

(c) Any person who has been convicted for an offense which occurred within this State prior to July 1, 1973, of any of the hereinafter enumerated crimes shall be considered as having been convicted previously of the crimes specified in subsection (b) of this section for purposes of the operation of this section and § 4215 of this title. Any person convicted under the laws of another state, the United States or any territory of the United States of any felony the same as or equivalent to any of the above or hereinafter named felonies is an habitual offender for the purposes of this section and § 4215 of this title.

Such felonies include:

Arson in the first degree,

Burglary in the first degree,

Burglary in the second degree,

Murder in the first degree,

Murder in the second degree,

Manslaughter except involuntary,

Manslaughter by motor vehicle,

Assault with intent to murder,

Poisoning with intent to murder,

Kidnapping,

Abducting child under 12 years,

Kidnapping child under 15 years,

Maiming by lying in wait,

Maiming without lying in wait,

Rape,

Assault with intent to commit rape,

Robbery,

Assault with intent to commit robbery.

(d) A conviction of rape or kidnapping under either § 763 or § 783 of this title, as the same existed and were defined prior to the amendment of this section, shall be considered a prior conviction for the purpose of the effectiveness and applicability of this subsection, this section and § 4215 of this title.

11 Del. C. 1953, § 4213; 58 Del. Laws, c. 497, § 2; 59 Del. Laws, c. 547, §§ 19-21; [65 Del. Laws, c. 159, § 1](#); [66 Del. Laws, c. 269, § 7](#); [67 Del. Laws, c. 350, § 37](#); [70 Del. Laws, c. 477, § 2](#); [71 Del. Laws, c. 285, §§ 15, 16](#); [72 Del. Laws, c. 34, § 4](#); [72 Del. Laws, c. 43, § 7](#); [72 Del. Laws, c. 197, § 8](#); [74 Del. Laws, c. 346, § 1](#); [77 Del. Laws, c. 318, § 15](#); [78 Del. Laws, c. 13, §§ 11, 12](#);

§ 6703. "Violent crime" defined.

For purposes of this chapter, the words "violent crime" shall mean: abuse of an infirm adult; abuse of a patient in a nursing facility; abuse of a patient causing injury; abuse of a patient causing death; adulteration causing death; adulteration causing injury; aggravated intimidation; arson in the first degree; arson in the second degree; assault in the first degree; assault in the second degree; assault in the third degree; assault in the first degree on K-9 dog causing, injury or death to the dog; assault on a K-9 dog with risk of injury to the dog; assault in a detention facility which causes injury; assault in a detention facility; assault on a sports official; bestiality; burglary in the first degree; carjacking; carrying a concealed deadly weapon (firearm offense); continuous sexual abuse of child; criminally negligent homicide; dealing with child pornography, second offense; possession of a destructive weapon; reckless endangering; escape after conviction; escape in the second degree; extortion; possession of an explosive device; unlawful imprisonment; incest; kidnapping in the first degree; kidnapping in the second degree; manslaughter; manufacture or use or possession of explosives or an incendiary device; murder in the first degree, murder in the second degree; organized crime and racketeering; possession of a deadly weapon during the commission of a felony; possession of a destructive weapon; possession of a firearm during the commission of a felony; promoting prison contraband (weapon); promoting prostitution in the first degree; racketeering; reckless endangering first degree; reckless endangering in the second degree; riot; robbery in the first degree; robbery in the second degree; continued sexual abuse of child; unlawful sexual contact in the first degree; unlawful sexual contact in the second degree; unlawful sexual contact in the third degree; sexual exploitation of a child; sexual extortion; rape in the first degree; rape in the second degree; rape in the third degree; rape in the fourth degree; unlawful sexual intercourse in the first degree; unlawful sexual intercourse in the second degree; unlawful sexual intercourse in the third degree; unlawful sexual penetration in the first degree; unlawful sexual penetration in the second degree; unlawful sexual penetration in the third degree; stalking; terroristic threatening; unlawful firearm transactions (second or subsequent offense); unlawful imprisonment in the first degree; unlawful transportation of a firearm to commit a felony; vehicular assault in the first degree; vehicular assault in the second degree; vehicular homicide in the first degree; vehicular homicide in the second degree; wearing body armor during felony.

§ 6712. First offender boot camp diversion program.

(a) Subject to the provisions of this section and notwithstanding any other law, rule or regulation to the contrary, any person convicted upon a plea of guilty or otherwise convicted of any of the offenses set forth in subsection (b) of this section may petition the court to defer further sentencing proceedings, and to divert the offender to the boot camp program. In addition, the Department of Correction may petition the court on behalf of any person in its custody who has been convicted of an offense set forth in subsection (b) of this section, for a sentence modification suspending the remainder of the offender's Level V sentence, and diverting such person to the boot camp diversion program ("modify and divert"). The Attorney General shall receive prior notice of all such applications and be provided an opportunity to be heard. Any offender diverted pursuant to this subsection shall be subject to the terms and conditions of this section. No person shall be eligible for boot camp pursuant to this section if the Attorney General's Office, upon written motion, opposes such boot camp diversion pursuant to paragraph (c)(2) of this section.

(b) Subject to the provisions of this section, certain persons convicted of the following offenses shall be potentially eligible for diversion to the boot camp inmate training program:

(1) Any offense in Title 16 relating to manufacture, delivery, or possession of controlled substances or prescription drugs, but not including §§ 4752-4756 of Title 16, except as set forth below; or

(2) Drug dealing or aggravated possession as set forth in §§ 4752-4756 of Title 16, but only if the weight of the illegal substance possessed is less than the minimum required for a Tier 3 Controlled Substances Quantity, as defined in § 4751C(3) of Title 16; or

(3) Burglary in the second degree, as set forth in § 825 of this title, but only if the defendant has not previously been convicted of burglary in the second degree or burglary in the first degree, as set forth in § 826 of this title.

(c) Notwithstanding any other provision of this section, no person shall be diverted to the boot camp program pursuant to this section or to otherwise utilize the provisions of this section, if:

(1) Such person has previously been incarcerated as an adult pursuant to a sentence imposed for a criminal conviction for any offenses set forth in Title 11 or 16, or any equivalent offense set forth under the laws of this State, any other state, or the United States or any territory thereof, and was previously sentenced to a term of more than 1 year of Level V incarceration, which was not suspended.

(2) The Attorney General's Office, upon written motion, opposes the Diversion. Such motion shall clearly articulate the specific reasons for such opposition.

(3) The Attorney General's Office offers the Boot Camp Diversion Program as part of a proposed plea agreement, the appellant rejects the offer, and the appellant is subsequently convicted after trial.

(d) Subject to the provisions of this section, and notwithstanding any other law, rule or regulation to the contrary, if the sentencing court chooses to grant the petition to defer or to modify and divert, as set forth in subsection (a) of this section, the sentencing court shall enter a judgment of conviction; and shall then defer sentencing, or modify the imposition of the remainder of any Level V sentence, including any Level V sentence otherwise required by § 4752 of Title 16, or by § 825, § 826 or § 4205 of this title or by any other law. The court shall then remand the offender to the custody of the Department of Correction upon the condition that the offender shall complete a program of supervision which shall include:

(1) Placement in a boot camp facility with a substance abuse treatment program for a period of not less than 6 months, to be followed by supervision at Level IV or III, or both, for a period of 1 and 1/2 years;

(2) A requirement that, while at supervision Level IV or III, the offender comply with the terms of a curfew, said terms to be imposed by either the sentencing court or the Department of Correction. The terms of said curfew may include mandated compliance with certain geographical limitations, prohibitions or restrictions;

(3) A requirement that, while at supervision Level IV or III, the offender participate in substance abuse treatment which shall include periodic, random urine surveillance during the entire period of supervision at Level IV or III, or both;

(4) Payment of the costs of prosecution, and payment of a \$500 civil penalty to the Substance Abuse Rehabilitation, Education and Prevention Fund; and

(5) any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.

(e) Whenever the court defers or modifies a sentence pursuant to this section, it shall inform the offender of the sentence to be imposed or reinstated in the event that the offender fails to comply with any of the terms of supervision or probation imposed pursuant to this section. Such term of imprisonment shall not be less than any applicable sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. Failure of the court to comply with this subsection shall not preclude the sentencing court from complying with any of the other provisions of this section.

(f) Whenever the court defers further sentencing proceedings pursuant to this section, it shall have the authority to remand the offender to the custody of the Department of Correction at Accountability Level III, IV or V until such offender is placed in a boot camp facility.

(g) The Department of Correction shall closely monitor all participants in this program, and shall ensure that those program participants at supervision Level IV or III shall be monitored by officers specifically assigned to such duties. The Department of Correction shall at all times have on duty no fewer than 8 probation officers (2 for each county and 2 for the City of Wilmington) who shall promptly respond to police agencies as requested for the purpose of taking custody of any person who is believed to have violated the terms or conditions of that person's program of supervision or probation at the boot camp, or at Level IV or III. Pursuant to Chapter 43 of this title such probation officer shall promptly file a probation violation report setting forth the nature and circumstances of the alleged violation with the appropriate court.

(h) Upon receipt of an allegation that an offender has violated the terms of that offender's supervision, the sentencing court shall cause the offender to be brought before it without unnecessary delay. Upon a finding that the offender has violated any of the terms or conditions of supervision or probation at the boot camp or at Level IV or Level III, the court shall proceed to sentencing on all charges for which sentencing was originally deferred pursuant to this section, and shall impose not less than the full applicable Level V sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. If the offender had already been sentenced and the sentence was modified pursuant to this section, the offender shall serve the remainder of that original sentence. No credit time shall be given for any time spent in boot camp, Level IV or Level III. Failure of the sentencing court to comply with the sentencing provisions of this subsection shall constitute an illegal sentence within the meaning of Chapter 99 of Title 10.

(i) Upon conclusion of the period of supervision and probation imposed pursuant to this section, the court may find that the offender has successfully completed the program, and, if it does, it shall discharge the offender from probation.

(j) Prior to the release of any offender from the boot camp to supervision Level IV or III, the Department of Correction shall enter into the DELJIS criminal history system information identifying the offender as a first offender drug felon.

[71 Del. Laws, c. 174, § 4](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 484, §§ 2-7](#); [74 Del. Laws, c. 106, §§ 11, 12](#); [75 Del. Laws, c. 167, § 1](#); [78 Del. Laws, c. 13, §§ 17-19](#);

TITLE 16

HB 19 - Synopsis

This Act is the product of the 'Drug Law Revisions Committee.' This Act repeals a significant portion of the existing criminal drug laws. In their place, this Act creates three main drug crimes – Drug Dealing (that is, delivery or manufacture, or possession with intent to deliver or manufacture); Aggravated Possession (that is, possession of amounts generally indicative of drug dealing but where drug dealing need not be proved); and Possession. Each of the crimes would have multiple levels of seriousness depending upon a number of aggravating factors, which would include proximity to a school or a park, presence in a vehicle, prior record, reaching a threshold weight of drugs, involvement of children in the offense, or resisting arrest with force or violence. None of the crimes would equate 'possession' and 'possession with intent to deliver' as do the present Possession within 1000 Feet of a School, Possession within 300 Feet of a Park, and Maintaining a Dwelling or Vehicle.

HB 30 - Synopsis

This bill adds synthetic cannabinoids, commonly known as "Spice," "K2," "Genie," "Yucatan Fire," "Sence," "Smoke," "Skunk," and "Zohai," to Schedule I controlled substances. The bill defines "synthetic cannabinoid."

Chapter 47 of Title 16 lists various controlled substance schedules and uses these schedules in describing various offenses and penalties.

"At least 10 states outlawed synthetic cannabinoids this year," according to the October/November 2010 issue of "State Legislatures." The magazine also says that the drug "produces a high similar to marijuana and is sold in local convenience stores and over the Web."

HB 63 - Synopsis

This bill provides important safeguards for vulnerable patients and residents who are treated in, or reside in healthcare, residential or treatment facilities, against sexual predators who exploit their infirmity or disability.

Under this bill it is illegal for an employee or volunteer of a healthcare facility, nursing home, assisted living facility, long-term care residence, group home, psychiatric treatment facility residential substance abuse or mental health facility, or any facility required to be licensed under Title 16 of the Delaware Code to engage in sexual activity with a patient or resident of a facility. Consent shall not be a defense.

Sexual contact with patient or resident by an employee or volunteer shall be a class G felony. Where an employee or volunteer engages in sexual penetration or sexual intercourse, the crime will be a Class C felony. Abuse, mistreatment or neglect resulting in serious physical injury is enhanced from a Class D felony to a Class C felony.

§ 1136. Violations.

(a) Any person, who knowingly abuses, mistreats or neglects a patient or resident of a facility shall be guilty of a class A misdemeanor. Where abuse results in sexual contact such person shall be guilty of a class G felony. Where the abuse, mistreatment or neglect results in serious physical injury, sexual penetration or sexual intercourse, such person shall be guilty of a class C felony.

(b) Any person who knowingly exploits a patient's or resident's resources shall be guilty of a class A misdemeanor where the value of the resources is less than \$1,000 and shall be guilty of a class G felony where the value of the resources is \$1,000 or more.

(c) Any member of the board of directors or a high managerial agent who knows that patients or residents of the facility are being abused, mistreated or neglected and fails to promptly take corrective action shall be guilty of a class A misdemeanor.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

[65 Del. Laws, c. 442, § 1](#); [72 Del. Laws, c. 120, §§ 5, 6](#); [78 Del. Laws, c. 30, §§ 2, 3](#);

§ 4751. Prohibited acts A; penalties. (67 Del. Laws, c. 130, § 15; 70 Del. Laws, c. 80, §§ 1-3; 76 Del. Laws, c. 108, §§ 1-3; repealed by [78 Del. Laws, c. 13 § 32](#), eff. Sept. 1, 2011.)

§ 4751A. Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following shall be an "aggravating factor" within the meaning of the offenses in this subchapter:

- a. The offense was committed within a protected school zone, as defined in § 4701 of this title;
- b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;
- c. The offense occurred in a vehicle, as defined in § 4701 of this title;
- d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and
- e. The defendant, during or immediately following the commission of any offense in this title:
 1. Intentionally prevented or attempted to prevent a law-enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law-enforcement officer; or

2. Intentionally fled in a vehicle from a law-enforcement officer, as defined in § 222(15) of Title 11, while the law-enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.

(2) When the aggravating factors "protected school zone" and "protected park, recreation area, church, synagogue or other place of worship" of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.

(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven.

[78 Del. Laws, c. 13, § 33](#); [70 Del. Laws, c. 186, § 1](#);

§ 4751B. Prior qualifying Title 16 convictions.

For the purposes of this subchapter:

(1) A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.

(2) "Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction", as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.

(3) In any offense involving a "prior qualifying Title 16 conviction" or "2 prior qualifying Title 16 convictions", the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.

(4) Penalties. --

a. In any case in which a defendant has a "prior qualifying Title 16 conviction", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.

2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.

4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.

5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.

7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.

8. A defendant convicted of § 4757(c)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(c)(2) of this title.

9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.

10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.

11. A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was convicted of § 4763(c) of this title.

12. A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was convicted of § 4764(a) of this title.

b. In any case in which a defendant has "2 prior qualifying Title 16 convictions", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4752 of this title.

2. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

§ 4751C. Quantity tiers related to drug offenses.

For the purposes of this subchapter:

(1) "Tier 5 Controlled Substances Quantity" means:

- a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 5000 grams or more of marijuana, as described in § 4701(26) of this title;
- d. 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;
- h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or
- i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(2) "Tier 4 Controlled Substances Quantity" means:

- a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 4000 grams or more of marijuana, as described in § 4701(26) of this title;
- d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 50 or more doses or 10 or more grams or 10 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(3) "Tier 3 Controlled Substances Quantity" means:

a. 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 3000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(4) "Tier 2 Controlled Substances Quantity" means:

a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 1500 grams or more of marijuana, as described in § 4701(26) of this title;

d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 25 or more doses or 5 or more grams or 5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(5) "Tier 1 Controlled Substances Quantity" means:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 175 grams or more of marijuana, as described in § 4701(26) of this title;

d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

[78 Del. Laws, c. 13, § 35.](#);

§ 4751D. Knowledge of weight or quantity not an element of the offense; proof of weight or quantity.

(a) In any prosecution under this subchapter, in which the weight or quantity of a controlled substance is an element of the offense, the State need not prove that the defendant had any knowledge as to the weight or quantity of the substance possessed. The State need only prove that the defendant knew that the substance was possessed; and, that the substance was that which is alleged, and that the substance weighed a certain amount or was in a certain quantity.

(b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the offense, and the controlled substance is alleged to be a prescription drug as defined in § 4701(37) of this title, and the alleged prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence that the "substantially identical doses" each contained the controlled substance that is a prescription drug for purposes of determining whether the State has proven the number of doses constituting the Tier quantities set forth in § 4751C(2)j. or (4)j. of this title. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting evidence offered pursuant to this subsection.

[78 Del. Laws, c. 13, § 36.](#);

§ 4752. Drug dealing--Aggravated possession; class B felony.

Except as authorized by this chapter, any person who:

(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;

(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;

(3) Possesses a controlled substance in a Tier 5 quantity;

(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or

(5) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.-i., of this title. and there are 2 aggravating factors,

shall be guilty of a class B felony.

[78 Del. Laws, c. 13, § 38.](#);

§ 4752A. Unlawful delivery of noncontrolled substance.

Repealed

[62 Del. Laws, c. 252, § 1](#); [63 Del. Laws, c. 72, § 1](#); [67 Del. Laws, c. 130, § 9](#); [70 Del. Laws, c. 80, § 4](#); repealed by [78 Del. Laws, c. 13 § 37, eff. Sept. 1, 2011](#);

§ 4753. Drug dealing--Aggravated possession; class C felony.

Except as authorized by this chapter, any person who:

(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity;

(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and there is an aggravating factor;

(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(2)a.-i. of this title;

(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.-i. of this title; and there is an aggravating factor; or

(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors,

shall be guilty of a class C felony.

[78 Del. Laws, c. 13, § 40](#);

§ 4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA).

Repealed

[63 Del. Laws, c. 134, § 1](#); [63 Del. Laws, c. 359, § 1](#); [64 Del. Laws, c. 87, §§ 1, 2](#); [65 Del. Laws, c. 317, §§ 1-3](#); [65 Del. Laws, c. 485, § 1](#); [67 Del. Laws, c. 115, §§ 1-16](#); [67 Del. Laws, c. 130, § 9](#); [67 Del. Laws, c. 427, § 1](#); [70 Del. Laws, c. 186, § 1](#); [70 Del. Laws, c. 235, § 1](#); [73 Del. Laws, c. 216, § 1](#); [73 Del. Laws, c. 253, §§ 1, 2, 3](#); [74 Del. Laws, c. 106, §§ 13-17](#); [74 Del. Laws, c. 288, §§ 1, 3-5](#); [76 Del. Laws, c. 108, § 5](#); [77 Del. Laws, c. 46, § 2](#); repealed by [78 Del. Laws, c. 13, § 39, eff. Sept. 1, 2011](#);

§ 4754. Drug dealing--Aggravated possession; class D felony.

Except as authorized by this chapter, any person who:

(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;

(2) Possesses a controlled substance in a Tier 3 quantity; or

(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,

shall be guilty of a class D felony.

[78 Del. Laws, c. 13, § 42.](#);

§ 4754A. Possession and delivery of non-controlled prescription drug.

[Repealed by [78 Del. Laws, c. 13, § 41](#), and substantially reenacted by § 57 of that act as present § 4761 of this title, effective September 1, 2011.]

§ 4755. Aggravated possession; class E felony.

Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.-i. of this title, shall be guilty of a class E felony.

[78 Del. Laws, c. 13, § 47.](#);

§ 4756. Aggravated possession; class F felony.

Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 1 quantity shall be guilty of a class F felony.

[78 Del. Laws, c. 13, § 54.](#);

§ 4757. Miscellaneous drug crimes; class B, C and F felony.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 4738 of this chapter;

(2) To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;

(3) To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;

(6) To acquire or attempt to or obtain possession of a controlled substance by theft; or

(7) To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.

(b) Any person who violates paragraphs (a)(1) through (a)(7) of this section upon conviction shall be guilty of a class F felony.

(c) Solicitation of multiple prescription drug crimes; penalties. --

(1) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section shall be guilty of a class C felony.

(2) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section, and there is an aggravating factor in connection with at least 1 of the times shall be guilty of a class B felony.

(3) Paragraphs (c)(1) and (2) of this section shall constitute an offense if any of the defendant's conduct or any of the violations of subsection (a) of this section occur within Delaware, or as otherwise provided pursuant to § 204 of Title 11.

16 Del. C. 1953, § 4756; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 7; [65 Del. Laws, c. 504, §§ 1-4](#); [67 Del. Laws, c. 130, § 9](#); [67 Del. Laws, c. 350, § 19](#); [71 Del. Laws, c. 288, § 10](#); [78 Del. Laws, c. 13, §§ 51-53](#);

§ 4758. Unlawful dealing in a counterfeit or purported controlled substance; class E felony.

(a) Any person who knowingly manufactures, delivers, attempts to manufacture or deliver, or possesses with the intent to manufacture or deliver a counterfeit or purported controlled substance shall be guilty of a class E felony.

(b) It is no defense to prosecution under this section that the substance actually is a controlled substance or that the accused believed the substance was a controlled substance.

[78 Del. Laws, c. 13, § 55](#);

§ 4759. Registrant crimes.

(a) It is unlawful for any person:

(1) Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 4739 of this title;

(2) Who is a registrant, to manufacture a controlled substance not authorized by the person's registration or to distribute or dispense a controlled substance not authorized by the person's registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; or

(4) To refuse an entry into any premises for any inspection authorized by this chapter.

(b) Any person who violates paragraph (a)(1), (a)(2), or (a)(4) of this section shall be guilty of a class F felony. Any person who violates paragraph (a)(3) of this section shall be guilty of a class A misdemeanor.

16 Del. C. 1953, § 4755; 58 Del. Laws, c. 424, § 1; [65 Del. Laws, c. 500, § 1](#); [67 Del. Laws, c. 130, § 9](#); [67 Del. Laws, c. 350, § 18](#); [70 Del. Laws, c. 186, § 1](#); [78 Del. Laws, c. 13, § 46](#);

§ 4760. Maintaining a drug property; class F felony.

Any person who is the owner, landlord, or tenant of a property, including a dwelling, a building, a store or a business, and who knowingly consents to the use of the property by another for the manufacture of, delivery of, or possession with the intent to manufacture or deliver, controlled substances, shall be guilty of a class F felony.

[78 Del. Laws, c. 13, § 56](#);

§ 4761. Illegal possession and delivery of noncontrolled prescription drugs.

(a) Any person who knowingly or intentionally possesses, uses or consumes any prescription drug that is not a controlled substance but for which a prescription is required shall be guilty of an unclassified misdemeanor, unless:

(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner;

(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

a. Pharmacists.

b. Practitioners.

c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

d. Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

f. Common carriers.

g. Manufacturers, wholesalers, and distributors.

h. Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(3) The possession or transfer is otherwise authorized by this chapter.

(b) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(c) Any person who violates subsection (a) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class G felony.

(d) Any person who violates subsection (b) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class F felony.

(e) Affirmative defenses. --

(1) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed by the person while transporting the prescription drug to a member of the person's household who possessed a valid prescription for the drug, and the prescription was in the original container in which it was dispensed or packaged, a pill box, or other daily pill container.

(2) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed or consumed within the residence of the person, that a member of the person's household possessed a valid prescription for the drug, that the possession or consumption by the person was for the purpose of treating an illness and that the drug in question was approved for the specific illness.

(f) Proof. -- In any prosecution under this section, proof that a substance is a particular prescription drug may be inferred from its labeling and any representations on the substance. Proof by testimony from a scientist is not required.

[63 Del. Laws, c. 445, § 1](#); [67 Del. Laws, c. 130, § 9](#); [67 Del. Laws, c. 384, §§ 1, 2](#); [70 Del. Laws, c. 81, § 4](#); [70 Del. Laws, c. 186, § 1](#); [78 Del. Laws, c. 13, §§ 41, 57](#);

§ 4761A. Purchase of drugs from minors; penalties. (71 Del. Laws, c. 234, § 1; repealed by 78 Del. Laws, c. 13 § 57, eff. Sept. 1, 2011.)

§ 4762. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties.

(a) No person shall deliver at retail or furnish to any person other than a practitioner an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle or any instrument adapted for the use of narcotic drugs by parenteral injection without a written order of a practitioner or oral order of a practitioner immediately reduced to writing by such person.

(b) Every person who disposes of or delivers at retail, or gives away to any person the instruments described in subsection (a) of this section, upon the written order of a practitioner or oral order of a practitioner immediately reduced to writing by such person, shall, before delivering the same:

(1) Enter into a book kept for that purpose the day of the delivery, the name, age and address of the purchaser and a description of the instrument sold, disposed of, furnished or given away; or

(2) Retain on file the original written order or oral order reduced to writing, noting on such orders any refills.

(c) No person except a practitioner or regular dealer in medical or surgical supplies or their authorized agents or employees shall possess an instrument described in subsection (a) of this section, without having in the person's possession a certificate from a physician certifying that the possession of such instrument is necessary for the treatment of an injury, deformity or disease then suffered by the person possessing the same. Every person who lawfully possesses an instrument described in subsection (a) of this section shall, before disposal, destroy such instrument in such a manner as to render it unfit for reuse in any manner.

(d) Any person who delivers, disposes of or gives away any instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle or any instrument adapted for the use of narcotic drugs by parenteral injection except in the manner prescribed in this section, shall be guilty of a class G felony.

(e) Nothing in this section shall prohibit the delivery, furnishing, sale, purchase or possession of an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle used or to be used solely and exclusively for treating poultry or livestock and such delivery, furnishing, sale, purchase, possession or use shall be governed by rules and regulations to be prescribed by the Department of Agriculture.

(f) This section does not apply to:

(1) The sale at wholesale by pharmacies, drug jobbers, drug wholesalers and drug manufacturers or manufacturers and dealers in surgical instruments to practitioners; and

(2) The furnishing or obtaining of hypodermic syringes or hypodermic needles for uses which the Secretary determines are industrial. Notwithstanding the other provisions of this section, a person may obtain such instruments, without a written order or oral order reduced to writing, for such industrial uses.

16 Del. C. 1953, § 4757; 58 Del. Laws, c. 424, § 1; 59 Del. Laws, c. 33, § 1; 59 Del. Laws, c. 291, § 1; 60 Del. Laws, c. 583, §§ 8-12; [67 Del. Laws, c. 130, § 9](#); [67 Del. Laws, c. 350, §§ 20, 21](#); [70 Del. Laws, c. 186, § 1](#); [78 Del. Laws, c. 13, § 50](#);

§ 4763. Possession of controlled substances or counterfeit controlled substances; class A or B misdemeanor.

(a) It shall be unlawful for any person to knowingly or intentionally possess, use, or consume a controlled substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) unless:

(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from or pursuant to, a lawful prescription or order; or

(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

a. Pharmacists.

b. Practitioners.

c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

d. Hospitals and healthcare facilities that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

f. Common carriers.

g. Manufacturers, wholesalers, and distributors.

h. Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(3) The possession or transfer is otherwise authorized by this chapter.

(b) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor.

(c) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class A misdemeanor.

[78 Del. Laws, c. 13, § 58.](#);

§ 4764. Possession of marijuana; class B or unclassified misdemeanor.

(a) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(b) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575 and imprisoned not more than 3 months.

[78 Del. Laws, c. 13, § 61.](#);

§ 4766. Conviction of lesser offense.

In any prosecution for any violation of the following sections of this chapter, the defendant may be convicted under any 1 of the following respective sections of this chapter in accordance with the table set forth below establishing lesser included offenses:

(1) The lesser-included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764 of this title.

(2) The lesser-included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764 of this title.

(3) The lesser-included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764 of this title.

(4) The lesser-included offenses under § 4755 are §§ 4756, 4763, and 4764 of this title.

(5) The lesser-included offenses under § 4756 are §§ 4763 and 4764 of this title.

16 Del. C. 1953, § 4762; 58 Del. Laws, c. 424, § 1; [78 Del. Laws, c. 13, §§ 48, 49.](#);

§ 4767. First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under § 4763 or § 4764 or § 4761(a) or (b) of this title; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under § 4763, § 4764 or § 4761(a) or (b) of this title arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within § 4752, § 4753, or § 4754 of this title.

(b) At time of arraignment any person qualifying under subsection (a) of this section as a first offender and who elects treatment under this section shall admit possession or consumption of a controlled substance by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation for a period of not less than 1 1/2 years, the terms and conditions of which shall include but not be limited to:

(1) Revocation of the person's driver's license and/or privileges within this State for a period of not less than 6 months, restoration of which shall be contingent upon successful completion of all mandatory terms and conditions required of probation to be completed during the term of revocation. Upon entry of a plea of guilty, as a first offender under this section, the clerk of the court or other person designated by the court shall forthwith report that fact to the Division of Motor Vehicles for action consistent with the provisions of this subsection. The Division of Motor Vehicles may issue a conditional license during this period of revocation upon written certification by the person's probation officer that a narrowly drawn conditional license is necessary for the limited purpose of performing the terms and conditions of probation.

(2) Performance of a minimum of 20 hours of community service work monitored by the court or probation office, performance of which shall be accomplished on at least 3 separate days and shall not, in any event consist of segments lasting more than 8 hours in succession. Community service performed pursuant to the terms of this paragraph shall be in addition to all other community service ordered and no community service ordered or performed pursuant to the terms of this section shall be performed or served concurrently with any other court ordered or approved community service.

(3) Completion of a 16-hour first-offender drug rehabilitation program, licensed by the Secretary of the Department of Health and Social Services and paid for by the first offender.

(4) Other such terms and conditions as the court may impose.

(c) If a term or condition of probation is violated, or if the defendant is found to have illegally possessed or consumed any controlled substance within 1 1/2 years of the entry of a plea under this section, the probation officer shall file with the court a written report of same, and the defendant shall be brought before the court and upon determination by the court that the terms have been violated or that the defendant has possessed or consumed any such controlled substance, the court shall enter an adjudication of guilt upon the record and proceed as otherwise provided under this title.

(d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be treated as a first offender under this section shall, by so doing, agree to pay the costs of the

person's prosecution as a condition. There may be only 1 discharge and dismissal under this section with respect to any person.

[67 Del. Laws, c. 347, § 1](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 110, § 6](#); [75 Del. Laws, c. 167, § 2](#); [78 Del. Laws, c. 13 § 60](#);

§ 4768. Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), § 4763, or § 4764 of this title, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

16 Del. C. 1953, § 4765; 58 Del. Laws, c. 424, § 1; [78 Del. Laws, c. 13 § 44](#);

§ 4774. Penalties.

(a) Possession. -- Any person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor.

(b) Manufacture and sale. -- Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony.

(c) Delivery to a minor. -- Any person 18 years of age or older who violates § 4771 of this title by delivering or selling drug paraphernalia to a person under 18 years of age is guilty of a class E felony.

(d) It is unlawful for any person to place in a newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of an unclassified misdemeanor.

[62 Del. Laws, c. 250, § 6](#); [67 Del. Laws, c. 130, § 9](#); [67 Del. Laws, c. 350, § 27](#); [73 Del. Laws, c. 359, § 4](#); [78 Del. Laws, c. 13, § 64](#);

TITLE 21

HB 19 - Synopsis

This Act is the product of the 'Drug Law Revisions Committee.' This Act repeals a significant portion of the existing criminal drug laws. In their place, this Act creates three main drug crimes – Drug Dealing (that is, delivery or manufacture, or possession with intent to deliver or manufacture); Aggravated Possession (that is, possession of amounts generally indicative of drug dealing but where drug dealing need not be proved); and Possession. Each of the crimes would have multiple levels of seriousness depending upon a number of aggravating factors, which would include proximity to a school or a park, presence in a vehicle, prior record, reaching a threshold weight of drugs, involvement of children in the offense, or resisting arrest with force or violence. None of the crimes would equate 'possession' and 'possession with intent to deliver' as do the present Possession within 1000 Feet of a School, Possession within 300 Feet of a Park, and Maintaining a Dwelling or Vehicle.

HB 168 - Synopsis

This Act strengthens criminal penalties for Driving Under the Influence ("DUI"). The window during which a second offense qualifies for enhanced penalties is increased from five to ten years and the window for a third offense to be considered a felony is removed altogether. The minimum sentences for felony level offenses are established in a stepwise fashion to provide increased sanctions for each subsequent offense. The Act allows the Court to suspend up to half of the minimum sentence for felony offenders but requires that in such instances the offender must participate in a program which includes intensive treatment as well as drug and alcohol abstinence for not less than 90 consecutive days. The Act requires the use of transdermal monitoring devices to ensure the period of alcohol abstinence. This Act provides for a "single track" for DUI cases wherein only one trial is required for misdemeanor DUI offenders; the trial will occur in the Court of Common Pleas. The Act clarifies that Ignition Interlock Devices ("IID") are required for all offenders with an alcohol concentration of .15 or more, and for those who refused a chemical test. The Act further clarifies the admissibility of chemical test reports and evidence in administrative license revocation hearings. The Act also makes various amendments to harmonize existing provisions with prior amendments.

§ 4177. Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties [Effective until July 1, 2012]

(a) No person shall drive a vehicle:

- (1) When the person is under the influence of alcohol;
- (2) When the person is under the influence of any drug;
- (3) When the person is under the influence of a combination of alcohol and any drug;
- (4) When the person's alcohol concentration is .08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;

(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2)a. No person shall be guilty under subsection (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under subsection (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.

(3)a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

c. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.

(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.

(c) For purposes of subchapter III of Chapter 27 of this title, this section and § 4177B of this title, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per two hundred ten liters of breath.

(2) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law enforcement agency, or any hospital or medical laboratory. It shall

not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(3) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(4) "Vehicle" shall include any vehicle as defined in § 101(80) of this title, any off-highway vehicle as defined in § 101(39) of this title and any moped as defined in § 101(31) of this title.

(5) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

(6) "Alcohol concentration of .15 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .15 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .15 or more grams per two hundred ten liters of breath.

(7) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(8) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

b. Cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of Title 16; or

c. Amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of Title 16; or

d. Methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of Title 16; or

e. Phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or

f. A designer drug as defined in § 4701 of Title 16; or

g. A substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(9) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution

brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.

(10) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 6 months or both, and shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of this title, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.

(3) For a third offense, be guilty of a class G felony, be fined not less than \$1,500 nor more than \$5,000 and imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than \$3,000 nor more than \$7,000, and imprisoned not less than 2 years nor more than 5 years.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not less than \$3,500 nor more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not less than \$5,000 nor more than \$10,000 and imprisoned not less than 5 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not less than \$10,000 nor more than \$15,000 and imprisoned not less than 10 years nor greater than 15 years.

(8) For the fourth, fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) The provisions of paragraphs (d)(3) and (4) of this section and the provisions of § 4177B(e)(2) of this title notwithstanding, the Attorney General may move the sentencing court to apply the provisions of

paragraph (d)(3) of this section to any person who would otherwise be subject to a conviction and sentencing pursuant to paragraph (d)(4) of this section.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of \$750 and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3) or (4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3) or (4) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (4) or (9) of this section.

(e) In addition to any penalty for the violation of subsection (a) or subsection (b) of this section, the court may prohibit a person convicted under either subsection from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; and such prohibition shall be for a period of not less than 1 year. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this subsection at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for 60 days.

(f) In addition to the penalties prescribed in paragraphs (2), (3) and (4) of subsection (d) of this section, anyone convicted of a subsequent like offense shall be ordered to complete an alcohol evaluation and complete a program of education or rehabilitation which may include inpatient treatment and be followed by such other programs as established by the training facility, not to exceed a total of 15 months and pay a fee not to exceed the maximum fine.

(g) For purposes of a conviction premised upon subsection (a) of this section, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence

establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in subsection (c)(2) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(1) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence may only be admissible in proceedings for the determination of guilt when evidence or argument by the defendant is admitted or made relating to the alcohol concentration of the person at the time of driving.

(2) Nothing in this section shall preclude conviction of an offense defined in this Code based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(h)(1) For the purpose of introducing evidence of a person's alcohol concentration or the presence or concentration of any drug pursuant to this section, a report signed by the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol, drugs or both therein stated.

(2) Any report introduced under paragraph (1) of this subsection must:

a. Identify the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (1) and (2) of this subsection.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

21 Del. C. 1953, § 4176; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 71, §§ 1-3; 57 Del. Laws, c. 526, §§ 1, 2; 57 Del. Laws, c. 613, § 1; 57 Del. Laws, c. 670, § 13B; 58 Del. Laws, c. 80, § 3; 59 Del. Laws, c. 46, §§ 1, 2; 60 Del. Laws, c. 701, §§ 48, 49; 60 Del. Laws, c. 702, § 2; 61 Del. Laws, c. 474, § 2; [64 Del. Laws, c. 13, § 13](#); [67 Del. Laws, c. 437, §§ 1, 2](#); [68 Del. Laws, c. 9, § 32](#); [68 Del. Laws, c. 125, § 1](#); [69 Del. Laws, c. 325, §§ 2, 3](#); [70 Del. Laws, c. 26, §§ 1-8](#); [70 Del. Laws, c. 34, § 1](#); [70 Del. Laws, c. 62, §§ 1-8](#); [70 Del. Laws, c. 186, § 1](#); [70 Del. Laws, c. 265, § 2](#); [70 Del. Laws, c. 474, § 1](#); [70 Del. Laws, c. 553, § 2](#); [71 Del. Laws, c. 209, §§ 1, 2](#); [71 Del. Laws, c. 222, §§ 2, 3](#); [72 Del. Laws, c. 36, §§ 1-3, 5, 6](#); [73 Del. Laws, c. 352, §§ 1, 11](#); [73 Del. Laws, c. 432, § 4](#); [74 Del. Laws, c. 182, §§ 1-3](#); [74 Del. Laws, c. 285, § 4](#); [74 Del. Laws, c. 333, §§ 1, 2](#); [75 Del. Laws, c. 315, §§ 1-5](#); [75 Del. Laws, c. 397, § 15](#); [77 Del. Laws, c. 162, §§ 1-6](#); [78 Del. Laws, c. 167, §§ 1, 16-18](#);

§ 4177. Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties [Effective July 1, 2012]

(a) No person shall drive a vehicle:

- (1) When the person is under the influence of alcohol;
- (2) When the person is under the influence of any drug;
- (3) When the person is under the influence of a combination of alcohol and any drug;

(4) When the person's alcohol concentration is .08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;

(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2)a. No person shall be guilty under subsection (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under subsection (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.

(3)a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

c. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.

(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.

(c) For purposes of subchapter III of Chapter 27 of this title, this section and § 4177B of this title, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per two hundred ten liters of breath.

(2) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(3) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(4) "Vehicle" shall include any vehicle as defined in § 101(80) of this title, any off-highway vehicle as defined in § 101(39) of this title and any moped as defined in § 101(31) of this title.

(5) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

(6) "Alcohol concentration of .15 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .15 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .15 or more grams per two hundred ten liters of breath.

(7) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(8) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

b. Cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of Title 16; or

c. Amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of Title 16; or

d. Methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of Title 16; or

e. Phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or

f. A designer drug as defined in § 4701 of Title 16; or

g. A substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(9) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.

(10) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.

(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years.

(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least one-half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:

a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device. In addition to such device, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.

b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.

c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of \$750 and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this

section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section.

(e) In addition to any penalty for a violation of subsection (a) of this section, the court shall, for any individual with an alcohol concentration of .15 or more or who refused a chemical test, prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C of this title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this title at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for 60 days.

(f) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine.

(g) For purposes of a conviction premised upon subsection (a) of this section, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in subsection (c)(2) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(1) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence may only be admissible in proceedings for the determination of guilt when evidence or argument by the defendant is admitted or made relating to the alcohol concentration of the person at the time of driving.

(2) Nothing in this section shall preclude conviction of an offense defined in this Code based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(h)(1) For the purpose of introducing evidence of a person's alcohol concentration or the presence or concentration of any drug pursuant to this section, a report signed by the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol, drugs or both therein stated.

(2) Any report introduced under paragraph (1) of this subsection must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (1) and (2) of this subsection.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

21 Del. C. 1953, § 4176; 54 Del. Laws, c. 160, § 1; 57 Del. Laws, c. 71, §§ 1-3; 57 Del. Laws, c. 526, §§ 1, 2; 57 Del. Laws, c. 613, § 1; 57 Del. Laws, c. 670, § 13B; 58 Del. Laws, c. 80, § 3; 59 Del. Laws, c. 46, §§ 1, 2; 60 Del. Laws, c. 701, §§ 48, 49; 60 Del. Laws, c. 702, § 2; 61 Del. Laws, c. 474, § 2; [64 Del. Laws, c. 13, § 13](#); [67 Del. Laws, c. 437, §§ 1, 2](#); [68 Del. Laws, c. 9, § 32](#); [68 Del. Laws, c. 125, § 1](#); [69 Del. Laws, c. 325, §§ 2, 3](#); [70 Del. Laws, c. 26, §§ 1-8](#); [70 Del. Laws, c. 34, § 1](#); [70 Del. Laws, c. 62, §§ 1-8](#); [70 Del. Laws, c. 186, § 1](#); [70 Del. Laws, c. 265, § 2](#); [70 Del. Laws, c. 474, § 1](#); [70 Del. Laws, c. 553, § 2](#); [71 Del. Laws, c. 209, §§ 1, 2](#); [71 Del. Laws, c. 222, §§ 2, 3](#); [72 Del. Laws, c. 36, §§ 1-3, 5, 6](#); [73 Del. Laws, c. 352, §§ 1, 11](#); [73 Del. Laws, c. 432, § 4](#); [74 Del. Laws, c. 182, §§ 1-3](#); [74 Del. Laws, c. 285, § 4](#); [74 Del. Laws, c. 333, §§ 1, 2](#); [75 Del. Laws, c. 315, §§ 1-5](#); [75 Del. Laws, c. 397, § 15](#); [77 Del. Laws, c. 162, §§ 1-6](#); [78 Del. Laws, c. 167, §§ 1-18](#);

§ 4177A. Revocation of license for violation of § 4177.

(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of drugs. Such revocation shall be for a period of:

(1) First offense -- 12 months; except that if the offender's blood alcohol concentration was between .15 -- .19 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.

(2) Second offense -- 18 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.

(3) Third offense -- 24 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, revocation period shall be 36 months.

(4) Fourth or further subsequent offenses -- 60 months regardless of the blood alcohol concentration.

(b) Any person sentenced under subsection (d) of § 4177 of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to § 4177D of this title.

(c) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of the county of residence.

61 Del. Laws, c. 474, § 2; [63 Del. Laws, c. 430, §§ 13, 14](#); [64 Del. Laws, c. 13, §§ 14, 15](#); [69 Del. Laws, c. 125, § 2](#); [69 Del. Laws, c. 190, § 1](#); [70 Del. Laws, c. 186, § 1](#); [73 Del. Laws, c. 352, § 2](#); [73 Del. Laws, c. 432, § 1](#); [75 Del. Laws, c. 397, §§ 1-3, 16-18](#); [78 Del. Laws, c. 167, § 20](#);

§ 4177B. First offenders; election in lieu of trial [Effective until July 1, 2012]

(a) Any person who:

(1) Has never had a previous or prior conviction or offense as defined in paragraph (e)(1) of this section;

(2) Had not accumulated 3 or more moving violations within 2 years of the date of the offense in question on the person's driving record according to the records of the Division of Motor Vehicles of the person's state of residence; and

(3) Was not, with respect to the offense in question, involved in an accident resulting in injury to any person other than the person's own self; and

(4) Did not have an alleged alcohol concentration of .15 or more at the time of driving or within 4 hours of driving;

(5) Was not driving without a valid license or under a suspended or revoked license at the time of the offense in question; and

(6) Is not subject to the enhanced penalties of § 4177(d)(9) of this title for carrying a child on or within that person's vehicle while driving under the influence;

may qualify for the first offense election at the time of arraignment. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established pursuant to § 4177D of this title. If the accused elects to apply, the application shall constitute a waiver of the right to speedy trial. If the person elects not to apply, or if is not accepted, the person shall promptly be arraigned for a violation of § 4177 of this title. If a person applies for or accepts the first offense election under this section, such act shall constitute agreement to pay the costs of prosecution for the case, and the court shall assess such costs and impose them as a condition of probation. If a person accepts the first offense election under this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor. If a person accepts the first offense election under this section, and the person has taken a chemical test pursuant to § 2741 of this title, such person may also elect at that time to participate in the First Offense Election -- Ignition Interlock Device Diversion described in subsection (g) of this section. For the purposes of this section, costs of prosecution shall be \$250 and any additional costs as established by the appropriate court schedules; and

(b) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the person shall be brought before the court, or if the person fails to appear before the court, in either case, upon a determination by the court that the terms have been violated, the court shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title.

(c) Upon fulfillment of the terms and conditions of probation, including satisfactory completion of the course of instruction and/or program of rehabilitation, and payment of all fees, the court shall discharge the person and the proceedings against the person and shall simultaneously with said discharge and dismissal submit to the Division of Motor Vehicles a written report specifying the name of the person and the nature of the proceedings against the person which report shall be retained by the Division of Motor Vehicles for further proceedings, if required.

(d) The driver's license and/or driving privileges of a person applying for enrollment in an education or rehabilitation program pursuant to subsection (a) of this section shall forthwith be revoked by the Secretary for a period of 1 year. If the person is accepted into the education or rehabilitation program the period of revocation shall be for 1 year from the date of the initial revocation. If the person is not accepted for enrollment, or if the person is found by the court to be in violation of the terms of enrollment, the revocation under this section shall continue until sentence is imposed. This revocation shall not be concurrent with or part of any period of

revocation established under any other provisions of this subchapter and shall be effective as of the date of sentencing for a period of 1 year.

(e)(1) Prior or previous conviction or offense. -- For purposes of §§ 2742, 4177 and 4177B of this title the provisions of § 4215A of Title 11 shall not be applicable but instead the following shall constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency pursuant to § 4175(b) or § 4177 of this title, or a similar statute of any state or local jurisdiction, any federal or military reservation or the District of Columbia;

b. A conviction or other adjudication of guilt or delinquency under a criminal statute encompassing death or injury caused to another person by the person's driving where driving under the influence or with a prohibited alcohol concentration was an element of the offense, whether such conviction was pursuant to a provision of this Code or the law of any state, local jurisdiction, any federal or military reservation or the District of Columbia;

c. Participation in a course of instruction or program of rehabilitation or education pursuant to § 4175(b), § 4177 or § 4177B of this title, or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia, regardless of the existence or validity of any accompanying attendant plea or adjudication of guilt;

d. A conditional adjudication of guilt, any court order, or any agreement sanctioned by a court requiring or permitting a person to apply for, enroll in or otherwise accept first offender treatment or any other diversionary program under this section or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia.

(2) Time limitations. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, the time limitations on use of prior or previous convictions or offenses as defined by this subsection shall be:

a. For sentencing pursuant to § 4177(d)(2) of this title, the 2nd offense must have occurred within 5 years of a prior offense;

b. For sentencing pursuant to § 4177(d)(3) of this title, the 3rd offense must have occurred within 5 years of the 1st offense to be calculated for sentencing;

c. For sentencing pursuant to § 4177(d)(4) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (1) of this subsection shall be considered for sentencing under § 4177(d)(4);

d. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (1) of this subsection shall be considered.

(3) Computation of time limitations. -- For the purpose of computing the periods of time set out in § 2742, § 4177 or § 4177B of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. However, in any case in which the prior offense is defined in subparagraph (1)c. or (1)d. of this subsection, the date of the driving incident which caused the adjudication or program participation shall be the date of the prior or previous offense.

(4) Separate and distinct offenses. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other

with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) Challenges to use of prior offenses. -- In any proceeding under § 2742, § 4177 or § 4177B of this title, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(f) The Attorney General may move the sentencing court to apply this section to any person who would otherwise be disqualified from consideration under this section because of the applicability of:

(1) Paragraph (a)(1) of this section, if any prior offense as defined in subsection (e) of this section is not within 10 years of the offense for which the person is being sentenced; or

(2) Paragraphs (a)(2), (a)(3), (a)(5) and (a)(6) of this section.

(3) Paragraph (a)(4) of this section -- However, if a person who has a blood alcohol concentration of .15 or greater is permitted to participate in the FOE-IID program pursuant to § 4177B(g) of this title, § 4177C(c) of this title shall apply.

In the event of such a motion by the Attorney General, the court may in its discretion apply the terms of this section to that person.

(g) First Offense Election -- Ignition Interlock Device Diversion. -- If a person accepts the first offense election under this section, such person may also elect at that time to participate in the First Offense Election -- Ignition Interlock Device (FOE-IID) Diversion as part of that person's probation. If a person elects to participate in the FOE-IID Diversion, such act shall constitute an agreement to all terms and conditions contained in the Ignition Interlock Device Program set forth in § 4177F of this title and the participant shall waive the right to an administrative hearing as provided for in § 2742 of this title or shall withdraw any request previously made therefor. Failure to comply with any part of this section or § 4177F of this title shall be considered a violation of the participant's probation for the purposes of subsection (b) of this section.

61 Del. Laws, c. 474, § 2; [63 Del. Laws, c. 430, § 15](#); [64 Del. Laws, c. 13, § 16](#); [69 Del. Laws, c. 134, § 1](#); [70 Del. Laws, c. 26, §§ 9, 10](#); [70 Del. Laws, c. 34, §§ 2, 3](#); [70 Del. Laws, c. 62, §§ 9, 10](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 209, §§ 3-5](#); [72 Del. Laws, c. 92, §§ 1, 2](#); [74 Del. Laws, c. 182, § 4](#); [74 Del. Laws, c. 333, § 3](#); [74 Del. Laws, c. 345, § 8](#); [75 Del. Laws, c. 397, § 4](#); [77 Del. Laws, c. 160, §§ 1, 2](#); [77 Del. Laws, c. 162, § 7](#); [78 Del. Laws, c. 167, §§ 22, 26](#);

§ 4177B. First offenders; election in lieu of trial [Effective July 1, 2012]

(a) Any person who:

(1) Has never had a previous or prior conviction or offense as defined in paragraph (e)(1) of this section;

(2) Had not accumulated 3 or more moving violations within 2 years of the date of the offense in question on the person's driving record according to the records of the Division of Motor Vehicles of the person's state of residence; and

(3) Was not, with respect to the offense in question, involved in an accident resulting in injury to any person other than the person's own self; and

(4) Did not have an alleged alcohol concentration of .15 or more at the time of driving or within 4 hours of driving;

(5) Was not driving without a valid license or under a suspended or revoked license at the time of the offense in question; and

(6) Is not subject to the enhanced penalties of § 4177(d)(10) of this title for carrying a child on or within that person's vehicle while driving under the influence;

may qualify for the first offense election at the time of arraignment. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established pursuant to § 4177D of this title. If the accused elects to apply, the application shall constitute a waiver of the right to speedy trial. If the person elects not to apply, or if is not accepted, the person shall promptly be arraigned for a violation of § 4177 of this title. If a person applies for or accepts the first offense election under this section, such act shall constitute agreement to pay the costs of prosecution for the case, and the court shall assess such costs and impose them as a condition of probation. If a person accepts the first offense election under this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor. If a person accepts the first offense election under this section, and the person has taken a chemical test pursuant to § 2741 of this title, such person may also elect at that time to participate in the First Offense Election -- Ignition Interlock Device Diversion described in subsection (g) of this section. For the purposes of this section, costs of prosecution shall be \$250 and any additional costs as established by the appropriate court schedules; and

(b) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the person shall be brought before the court, or if the person fails to appear before the court, in either case, upon a determination by the court that the terms have been violated, the court shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title.

(c) Upon fulfillment of the terms and conditions of probation, including satisfactory completion of the course of instruction and/or program of rehabilitation, and payment of all fees, the court shall discharge the person and the proceedings against the person and shall simultaneously with said discharge and dismissal submit to the Division of Motor Vehicles a written report specifying the name of the person and the nature of the proceedings against the person which report shall be retained by the Division of Motor Vehicles for further proceedings, if required.

(d) The driver's license and/or driving privileges of a person applying for enrollment in an education or rehabilitation program pursuant to subsection (a) of this section shall forthwith be revoked by the Secretary for a period of 1 year. If the person is accepted into the education or rehabilitation program the period of revocation shall be for 1 year from the date of the initial revocation. If the person is not accepted for enrollment, or if the person is found by the court to be in violation of the terms of enrollment, the revocation under this section shall continue until sentence is imposed. This revocation shall not be concurrent with or part of any period of revocation established under any other provisions of this subchapter and shall be effective as of the date of sentencing for a period of 1 year.

(e)(1) Prior or previous conviction or offense. -- For purposes of §§ 2742, 4177 and 4177B of this title the provisions of § 4215A of Title 11 shall not be applicable but instead the following shall constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency pursuant to § 4175(b) or § 4177 of this title, or a similar statute of any state or local jurisdiction, any federal or military reservation or the District of Columbia;

b. A conviction or other adjudication of guilt or delinquency under a criminal statute encompassing death or injury caused to another person by the person's driving where driving under the influence or with a prohibited alcohol concentration was an element of the offense, whether such conviction was pursuant to a provision of this Code or the law of any state, local jurisdiction, any federal or military reservation or the District of Columbia;

c. Participation in a course of instruction or program of rehabilitation or education pursuant to § 4175(b), § 4177 or § 4177B of this title, or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia, regardless of the existence or validity of any accompanying attendant plea or adjudication of guilt;

d. A conditional adjudication of guilt, any court order, or any agreement sanctioned by a court requiring or permitting a person to apply for, enroll in or otherwise accept first offender treatment or any other diversionary program under this section or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia.

(2) Time limitations. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, the time limitations on use of prior or previous convictions or offenses as defined by this subsection shall be:

a. For sentencing pursuant to § 4177(d)(2) of this title, the 2nd offense must have occurred within 10 years of a prior offense;

b. For sentencing pursuant to § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered for sentencing.

c. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (1) of this subsection shall be considered.

(3) Computation of time limitations. -- For the purpose of computing the periods of time set out in § 2742, § 4177 or § 4177B of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. However, in any case in which the prior offense is defined in subparagraph (1)c. or (1)d. of this subsection, the date of the driving incident which caused the adjudication or program participation shall be the date of the prior or previous offense.

(4) Separate and distinct offenses. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) Challenges to use of prior offenses. -- In any proceeding under § 2742, § 4177 or § 4177B of this title, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(f) The Attorney General may move the sentencing court to apply this section to any person who would otherwise be disqualified from consideration under this section because of the applicability of:

(1) Paragraph (a)(1) of this section, if any prior offense as defined in subsection (e) of this section is not within 10 years of the offense for which the person is being sentenced; or

(2) Paragraphs (a)(2), (a)(3), (a)(5) and (a)(6) of this section.

(3) Paragraph (a)(4) of this section. -- However, if a person has a blood alcohol concentration of .15 or greater, § 4177C(c) of this title shall apply. A person with a blood alcohol concentration of .15 or greater shall not be permitted to participate in the FOE-IID program pursuant to § 4177B(g) of this title.

In the event of such a motion by the Attorney General, the court may in its discretion apply the terms of this section to that person.

(g) First Offense Election -- Ignition Interlock Device Diversion. -- If a person accepts the first offense election under this section, such person may also elect at that time to participate in the First Offense Election -- Ignition Interlock Device (FOE-IID) Diversion as part of that person's probation. If a person elects to participate in the FOE-IID Diversion, such act shall constitute an agreement to all terms and conditions contained in the Ignition Interlock Device Program set forth in § 4177F of this title and the participant shall waive the right to an administrative hearing as provided for in § 2742 of this title or shall withdraw any request previously made therefor. Failure to comply with any part of this section or § 4177F of this title shall be considered a violation of the participant's probation for the purposes of subsection (b) of this section.

61 Del. Laws, c. 474, § 2; [63 Del. Laws, c. 430, § 15](#); [64 Del. Laws, c. 13, § 16](#); [69 Del. Laws, c. 134, § 1](#); [70 Del. Laws, c. 26, §§ 9, 10](#); [70 Del. Laws, c. 34, §§ 2, 3](#); [70 Del. Laws, c. 62, §§ 9, 10](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 209, §§ 3-5](#); [72 Del. Laws, c. 92, §§ 1, 2](#); [74 Del. Laws, c. 182, § 4](#); [74 Del. Laws, c. 333, § 3](#); [74 Del. Laws, c. 345, § 8](#); [75 Del. Laws, c. 397, § 4](#); [77 Del. Laws, c. 160, §§ 1, 2](#); [77 Del. Laws, c. 162, § 7](#); [78 Del. Laws, c. 167, §§ 21-27](#);

§ 4177C. Conditional licenses; reinstatement of license [Effective until July 1, 2012]

(a) Any person who, as a first offender, is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177B of this title shall be permitted to apply for a conditional license under the following terms:

- (1) Satisfactory completion of at least 16 hours of instruction and/or rehabilitation;
- (2) Payment of all fees under the schedule adopted by the Secretary;
- (3) Three months have elapsed since the effective date of revocation.

(b) Any person who, as a first offender is enrolled in a course of instruction or program of rehabilitation pursuant to §§ 4177B(g) and 4177D of this title shall be permitted to apply for an ignition interlock license under the following terms:

- (1) At least 1 month has elapsed since the effective date of the revocation.

(2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID [ignition interlock device] license.

(c) Any person who, as a first offender with a blood alcohol concentration of .15 or greater or a first offender who refused a chemical test, has been permitted to participate in the FOE-IID Diversion pursuant to § 4177B(g) of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to §§ 4177B(g) and 4177D of this title shall have an ignition interlock device installed on a minimum of 1 vehicle registered in that person's name or may have the device installed on a vehicle owned by another person if there are no vehicles registered in the name of the offender, immediately following the effective date of revocation. The ignition interlock device shall remain installed on the vehicle for a period of 6 months from the effective date of revocation. That offender may be eligible to apply for an ignition interlock device license under the following terms:

(1) At least 45 days has elapsed since the effective date of the revocation.

(2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID (Ignition Interlock Device) license.

(d) Any person who, as a first offender is sentenced pursuant to § 4177(d) of this title, and whose blood alcohol concentration is .15 or greater or has refused a chemical test, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title shall be eligible to apply for the ignition interlock device installed on a minimum of 1 vehicle registered in that person's name or may have the device installed on a vehicle owned by another person if there are no vehicles registered in the name of the offender, immediately following the effective date of revocation. That offender may be eligible to apply for an IID license under the following terms:

(1) At least 45 days has elapsed since the effective date of the revocation.

(2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.

(3) For a person sentenced under this section, the IID license issued shall limit conditional driving privileges to driving to and from work, school, alcohol treatment programs, and the interlock service provider.

(e) Any person who, as a second or subsequent offender or who has refused a chemical test, is sentenced pursuant to § 4177(d) of this title, shall 12 months from the effective date of the revocation, have the ignition interlock device installed on all vehicle or vehicles registered in that person's name or may have the device installed on a vehicle owned by another person if there are no vehicles registered in the name of the offender. That offender may be eligible to apply for an IID license under the following terms;

(1) Satisfactory completion of a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title.

(2) At least 12 months have elapsed since the effective date of the revocation.

(3) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.

(f) Notwithstanding §§ 4177A and 4177B of this title, any person who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) For a person who elected to enroll in a course of instruction or program of rehabilitation pursuant to § 4177B of this title, at least 6 months have elapsed since the effective date of the revocation.

(3) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the effective date of the revocation.

(4) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 17 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(5) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(6) For a person sentenced for a second offense pursuant to § 4177 of this title, at least 6 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(7) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 12 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(8) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 18 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(9) For a person sentenced for a third offense pursuant to § 4177 of this title, at least 12 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(10) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 or greater, at least 18 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(11) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 24 months have elapsed since the day the ignition interlock was installed on the vehicle or vehicles and the ignition interlock license was issued.

(12) For a person sentenced for a fourth or further subsequent offense pursuant to § 4177 of this title, at least 48 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(g) Notwithstanding § 4177 of this title, any person subject to a period of voluntary revocation pursuant to § 4177F(f)(1) of this title who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for a driver's license under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) At least 5 months have elapsed since the day an IID was installed on the person's motor vehicle.

(h) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (1) who is convicted of a first offense pursuant to § 4177 of this title, (2) who makes a first offense election pursuant to § 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating substance, shall be granted a conditional license immediately upon application, and shall not be required to complete a course of instruction established under § 4177D of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than .08 is under the influence of alcohol.

61 Del. Laws, c. 474, § 2; [63 Del. Laws, c. 430, §§ 16, 17](#); [64 Del. Laws, c. 13, §§ 17, 18](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 92, § 4](#); [73 Del. Laws, c. 352, §§ 3-5](#); [74 Del. Laws, c. 333, § 6](#); [75 Del. Laws, c. 397, §§ 5, 6](#); [77 Del. Laws, c. 160, §§ 3-6](#);

§ 4177C. Conditional licenses; reinstatement of license [Effective July 1, 2012]

(a) Any person who, as a first offender, is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177B of this title shall be permitted to apply for a conditional license under the following terms:

- (1) Satisfactory completion of at least 16 hours of instruction and/or rehabilitation;
- (2) Payment of all fees under the schedule adopted by the Secretary;
- (3) Three months have elapsed since the effective date of revocation.

(b) Any person who, as a first offender is enrolled in a course of instruction or program of rehabilitation pursuant to §§ 4177B(g) and 4177D of this title shall be permitted to apply for an ignition interlock license under the following terms:

- (1) At least 1 month has elapsed since the effective date of the revocation.
- (2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID [ignition interlock device] license.

(c) Any person who, as a first offender with a blood alcohol concentration of .15 or greater or a first offender who refused a chemical test, has been permitted to participate in the first offenders election pursuant to § 4177B of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title shall have an ignition interlock device installed on a minimum of 1 vehicle registered in that person's name or may have the device installed on a vehicle owned by another person if there are no vehicles registered in the name of the offender, immediately following the effective date of revocation. The ignition interlock device shall remain installed on the vehicle for a period of 6 months from the effective date of revocation. That offender may be eligible to apply for an ignition interlock device license under the following terms:

- (1) At least 45 days has elapsed since the effective date of the revocation.
- (2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID (Ignition Interlock Device) license.

(d) Any person who, as a first offender is sentenced pursuant to § 4177(d) of this title, and whose blood alcohol concentration is .15 or greater or has refused a chemical test, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title shall be eligible to apply for the ignition interlock device installed on a minimum of 1 vehicle registered in that person's name or may have the device installed on a vehicle owned by another person if there are no vehicles registered in the name of the offender, immediately following the effective date of revocation. That offender may be eligible to apply for an IID license under the following terms:

- (1) At least 45 days has elapsed since the effective date of the revocation.
- (2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.
- (3) For a person sentenced under this section, the IID license issued shall limit conditional driving privileges to driving to and from work, school, alcohol treatment programs, and the interlock service provider.

(e) Any person who, as a second or subsequent offender or who has refused a chemical test, is sentenced pursuant to § 4177(d) of this title, shall 12 months from the effective date of the revocation, have the ignition interlock device installed on all vehicle or vehicles registered in that person's name or may have the device installed on a vehicle owned by another person if there are no vehicles registered in the name of the offender. That offender may be eligible to apply for an IID license under the following terms;

(1) Satisfactory completion of a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title.

(2) At least 12 months have elapsed since the effective date of the revocation.

(3) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.

(f) Notwithstanding §§ 4177A and 4177B of this title, any person who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) For a person who elected to enroll in a course of instruction or program of rehabilitation pursuant to § 4177B of this title, at least 6 months have elapsed since the effective date of the revocation.

(3) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the effective date of the revocation.

(4) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 17 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(5) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(6) For a person sentenced for a second offense pursuant to § 4177 of this title, at least 6 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(7) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 12 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(8) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 18 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(9) For a person sentenced for a third offense pursuant to § 4177 of this title, at least 12 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(10) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 or greater, at least 18 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(11) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 24 months have elapsed since the day the ignition interlock was installed on the vehicle or vehicles and the ignition interlock license was issued.

(12) For a person sentenced for a fourth or further subsequent offense pursuant to § 4177 of this title, at least 48 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(g) Notwithstanding § 4177 of this title, any person subject to a period of voluntary revocation pursuant to § 4177F(f)(1) of this title who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for a driver's license under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) At least 5 months have elapsed since the day an IID was installed on the person's motor vehicle.

(h) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (l) who is convicted of a first offense pursuant to § 4177 of this title, (2) who makes a first offense election pursuant to § 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating substance, shall be granted a conditional license immediately upon application, and shall not be required to complete a course of instruction established under § 4177D of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than .08 is under the influence of alcohol.

61 Del. Laws, c. 474, § 2; [63 Del. Laws, c. 430, §§ 16, 17](#); [64 Del. Laws, c. 13, §§ 17, 18](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 92, § 4](#); [73 Del. Laws, c. 352, §§ 3-5](#); [74 Del. Laws, c. 333, § 6](#); [75 Del. Laws, c. 397, §§ 5, 6](#); [77 Del. Laws, c. 160, §§ 3-6](#); [78 Del. Laws, c. 167, § 28](#);

§ 4177K. Revocation of license for persons convicted of all drug offenses.

(a) Except as provided by § 1012 of Title 10, any person who pleads guilty to or is convicted of, including a guilty plea or conviction pursuant to § 4767 of Title 16, a violation of §§ 4752-4764 of Title 16, or any drug offense under Chapter 5 of Title 11 or under any law of the United States, any state of the United States or any local jurisdiction or the District of Columbia, or who is adjudicated delinquent as a result of acts which would constitute such offenses if committed by an adult, shall, in addition to any and all other penalties provided by law, have the person's driver's license and/or driving privileges revoked by the Secretary for a period of 6 months from the date of sentencing.

(b) In cases where this section is applied, the Court shall immediately take possession of any Delaware issued driver's license and forthwith forward it to the Secretary, together with notification that revocation pursuant to this section has been implemented.

(c) When a driver's license is revoked pursuant to this section, any such individual not in violation of probational requirements regarding substance abuse treatment shall be permitted to apply for a conditional license for the limited purpose of employment, to attend treatment appointments and to meet with their probation officer.

(d) [Transferred to paragraph (c) of this section]

(e) [Repealed].

[67 Del. Laws, c. 148, § 1](#); [67 Del. Laws, c. 429, §§ 6-8](#); [69 Del. Laws, c. 125, §§ 3, 4](#); [69 Del. Laws, c. 190, § 2](#); [70 Del. Laws, c. 186, § 1](#); [73 Del. Laws, c. 408, § 2](#); [73 Del. Laws, c. 414, § 2](#); [74 Del. Laws, c. 273, § 2](#); [76 Del. Laws, c. 94, §§ 1, 2](#); [78 Del. Laws, c. 13, § 70](#);

§ 4177L. Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective until July 1, 2012]

(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$200 for the first offense and not less than \$400 nor more than \$1,000 for each subsequent offense.

(b) In any proceeding under this section, evidence may be admitted of the amount of alcohol in the blood or breath of such underage person as determined by a specimen taken within 4 hours of the time when such person is alleged to have driven, operated or been in control of a vehicle after having consumed alcoholic liquor as shown by an analysis of that person's breath, blood, urine, or saliva. Evidence that there was at the time of the test an alcohol concentration of .02 or more in that person's blood or breath is per se evidence that the person had consumed alcoholic liquor. "Alcohol concentration of .02 or more in that person's blood or breath" shall mean (1) an amount of alcohol in a sample of a person's blood equivalent to .02 or more grams of alcohol per hundred milliliters of blood; or (2) an amount of alcohol in a sample of a person's breath equivalent to .02 or more grams per 210 liters of breath. This provision shall not preclude a conviction based upon other admissible evidence.

(c) In addition to any other powers of arrest, any police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer.

[70 Del. Laws, c. 36, § 1](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 450, § 1](#);

§ 4177L. Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective July 1, 2012]

(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$200 for the first offense and not less than \$400 nor more than \$1,000 for each subsequent offense.

(b) In any proceeding under this section, evidence may be admitted of the amount of alcohol in the blood or breath of such underage person as determined by a specimen taken within 4 hours of the time when such person is alleged to have driven, operated or been in control of a vehicle after having consumed alcoholic liquor as shown by an analysis of that person's breath, blood, urine, or saliva. Evidence that there was at the time of the test an alcohol concentration of .02 or more in that person's blood or breath is per se evidence that the person had consumed alcoholic liquor. "Alcohol concentration of .02 or more in that person's blood or breath" shall mean (1) an amount of alcohol in a sample of a person's blood equivalent to .02 or more grams of alcohol per hundred milliliters of blood; or (2) an amount of alcohol in a sample of a person's breath equivalent to .02 or more grams per 210 liters of breath. This provision shall not preclude a conviction based upon other admissible evidence.

(c) In addition to any other powers of arrest, any police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer.

(d) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete a drug and alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title.

[70 Del. Laws, c. 36, § 1](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 450, § 1](#); [78 Del. Laws, c. 167, § 29](#);

§ 4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs [Effective until July 1, 2012]

No person shall drive, operate, or have actual physical control of a commercial motor vehicle with an alcohol concentration of .04 or more in that person's blood or breath or having used a controlled substance or any drug which impairs driving ability. Any person who violates this section shall be guilty of an unclassified misdemeanor, and shall be subject to the provisions of Chapter 26 of this title. Prosecution under this section does not preclude prosecution under any other section of the Code. "Alcohol concentration of .04 or more" shall mean:

(1) An amount of alcohol in a sample of a person's blood equivalent to .04 or more grams of alcohol per 100 milliliters of blood; or,

(2) An amount of alcohol in a sample of a person's breath equivalent to .04 or more grams per 210 liters of breath.

[70 Del. Laws, c. 134, § 5](#); [70 Del. Laws, c. 186, § 1](#); [77 Del. Laws, c. 60, § 15](#);

§ 4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs [Effective July 1, 2012]

(a) No person shall drive, operate, or have actual physical control of a commercial motor vehicle with an alcohol concentration of .04 or more in that person's blood or breath or having used a controlled substance or any drug which impairs driving ability. Any person who violates this section shall be guilty of an unclassified misdemeanor, and shall be subject to the provisions of Chapter 26 of this title. Prosecution under this section does not preclude prosecution under any other section of the Code. "Alcohol concentration of .04 or more" shall mean:

(1) An amount of alcohol in a sample of a person's blood equivalent to .04 or more grams of alcohol per 100 milliliters of blood; or,

(2) An amount of alcohol in a sample of a person's breath equivalent to .04 or more grams per 210 liters of breath.

(b) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete a drug and alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title.

[70 Del. Laws, c. 134, § 5](#); [70 Del. Laws, c. 186, § 1](#); [77 Del. Laws, c. 60, § 15](#); [78 Del. Laws, c. 167, § 30](#);

SEX OFFENDER REGISTRATION PROVISIONS

Please review Title 11 Section 4121 for the complete Sex Offender information-

(f)(1) Any person designated, as a sex offender pursuant to this section shall comply with the registration provisions of Section 4120 of this title as follows:

- a. For life, if the sex offender is designated to Assessment Tier III, or if the person is designated to Assessment Tier I or II, and has previously been convicted of any of the offenses specified in subparagraphs (a)(4)a., c. or d. of this section; or
- b. For 25 years following the sex offender's release from Level V custody, or for 25 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier II, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 25 year period.
- c. For 15 years following the sex offender's release from Level V custody, or for 15 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Assessment Tier I, and is not otherwise required to register for life pursuant to this subsection period of Level V custody shall not be counted against such 15 year period.

(2) Notwithstanding any provision in this section to the contrary:

- a. Any sex offender designated to Assessment Tier III may petition to the Superior Court for redesignation to Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, and has not been convicted of any crime (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole, or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or Section 4120 of this title to the contrary, any sex offender who is redesignated from Assessment Tier III to Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by Section 4120(g) upon Tier III offenders for life. Any re-designation from Assessment Tier III to Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to Section 4120 (g)(1)(a) of this title and subsection (f)(1) of this section.
- b. Any sex offender designated to Assessment Tier II may petition the Superior Court for redesignation to Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can or have occurred.

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- c. Any sex offender designated to Assessment Tier I may petition the Superior Court for relief from designation as a sex offender, and from all obligations imposed pursuant to this section and Section 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole, or conditional release to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can or have occurred.
 - d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:
 - a. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation; and
 - b. The Court provides the Attorney General with notice of the petition and with reasonable period of time to be heard upon the matter.

When considering a petition for redesignation, the Court shall weigh all the relevant evidence, which bears upon the character and propensities of the offender, and the facts and circumstances of his or her prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly enter the information concerning the redesignation into the DELJIS system.

Delaware State Police Bureau of Identification closest to your location.

- A. The Delaware State Police shall mail a non-forwardable letter to the last known address of the person. Mailing address will be done in batch and sent 30 days prior to the re-registration date.
- B. For example, if registration date is March 15, a letter will be mailed out in February stating you must respond prior to March 31st that year. Listed below are the time limits for Sex Offender registration-

Tier Level 1 – Once a year in person

Tier Level 2 – Twice a year in person (every 6 months)

Tier Level 3 - Four times a year, quarterly, in person

Note: **Reporting times are based on the offender's date of initial registration.**

Homeless Sex Offender reporting Requirements

Tier Level 1 – Report in person every 90 days for verification

Tier Level 2 – Report in person every 30 days for verification

Tier Level 3 – Report in person every 7 days for verification

Reporting locations are as follows- Offenders must report to State Bureau of Identification Dover, or State Bureau of Identification Northern location which is Delaware State Police Troop # 2. Currently we have no reporting location in Sussex County.

- C. Once the court has found a person guilty of a Megan's Law felony offense, Title 11 Section 4120 of the Delaware Code, the offenders Driver's License must be relinquished to the applicable court. The court will issue a temporary operator's license, directing that person to report to the Division of Motor Vehicle for a replacement Driver's License with the code under restrictions: "Y" indicating sex offender. The person will pay \$5.00 to the Division of Motor Vehicles for the replacement license. The Division of Motor Vehicles will receive an automated notification generated by CJIS advising that the offender will be appearing to have another photo taken and a new restriction coded operator's license issued. Note, upon a person being removed from the registration requirement, the Division of Motor Vehicle shall issue a license without the sex offender code printed at no charge. The sentencing court shall forward to the Division all licenses that it receives, along with a copy of the Sentencing Order.

Note: This section was passed to bring Delaware into compliance with Title 42 United States Code, Section 14071, The Jacob Wetterling Crimes Against Children and Sexually Violent Offender registration program by September 13, 1997 compliance deadline.

SEX OFFENDER TIER III ASSESSMENT

1. Automatic designation to Tier III

- a. DE110773 Rape First Degree
DE110772 Rape Second Degree
DE110771 Rape Third (if involved a child under 12, or offense involved force or threat of Physical Violence)
DE110769 Unlawful Sexual Contact First Degree
DE110772 Unlawful Sexual Penetration First Degree (repealed in 1998)
DE110771 Unlawful Sexual Penetration Second Degree (repealed in 1998)
DE110775 Unlawful Sexual Intercourse Second Degree (repealed in 1998)
DE110774 Unlawful Sexual Intercourse First Degree (repealed in 1998)
DE110778 Continuous Sexual Abuse of a Child
DE111108 Sexual Exploitation of a Child
- b. DE1107830004 Kidnapping First Degree*
DE110783A004 Kidnapping Second Degree*

***If the purpose of the crime was to facilitate the commission of any offense designated as a sexual offense where the defendant is not a parent, step parent or guardian of the victim.**

- c. Any attempt to commit the previous offenses
DE110531
- d. Any equivalent offense in any other state or US Territory.
- e. **Upon motion of the State, any person convicted of a felony, if the victim had not yet reached his or her 16ⁿ birthday AND if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense and the character and propensities of the offender, that public safety will be enhanced.**

DE110761 (currently definitions only) Sexual Assault 7/1/73-7/9/86
DE110762 (currently provisions applic. to sex offenses) Sexual Miscond. 7/1/73- 7/9/86
DE110764 Indecent Exposure Second Degree – If Second Conviction within 5yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE110768 Unlawful Sexual Contact Second
DE110770 Rape Fourth Degree
DE110771 Rape Third Degree
DE110776 Sexual Extortion
DE110777 Bestiality
DE110779 Dangerous Crime Against a Child
DE111108 Sexual Exploitation of a Child
DE111109 Unlawfully Dealing in Child Pornography

DE111110 Subsequent Conviction of 1108 or 1109
DE111111 Possession of Child Pornography
DE111112A Sexual Solicitation of a Child

SEX OFFENDER TIER II ASSESSMENT

1. Automatic Designation to Tier II

- a. DE110771 Rape Third Degree (if does NOT involve a child under 12, or offense involved force or threat of Physical Violence)
DE110770 Rape Fourth Degree
DE110770 Unlawful Sexual Penetration Third Degree (repealed in 1998)
DE110773 Unlawful Sexual Intercourse Third Degree (repealed in 1998)
DE110768 Unlawful Sexual Contact Second Degree
DE110776 Sexual Extortion
DE110777 Bestiality
DE110779 Dangerous Crime Against a Child
DE111109 Unlawfully Dealing in Child Pornography
DE111111 Possession of Child Pornography
DE111112A Sexual Solicitation of a Child
DE110762 (Currently Provisions applic. to sex offenses) Sexual Miscond. 7/1/73- 7/9/86
DE111361 Providing Obscene Materials to Minors
- b. Any attempt to commit the previous offenses
DE110531
- c. Any equivalent offense in any other state or U.S. Territory
- d. **Upon motion of the State, a person convicted of any sexual offense, if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence, which bears upon the particular facts and circumstances or details of the commission of the offense and the character and propensities of the offender, that public safety will be enhanced.**

DE110761 (currently definitions only) Sexual Assault DE110762 (currently provisions applic. to sex offenses) Sexual Miscond. 7/1/73-7/9/86
DE110764 Indecent Exposure Second Degree – If Second Conviction within 5 yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE111108 Sexual Exploitation of a Child
DE111110 Subsequent Conviction of 1108 or 1109
DE111111 Possession of Child Pornography
DE111321(5) Loitering in Public Place to Solicit
DE111352(2) Promotes/Profits from Prostitution of a Person under 18 years
DE111353(3) Promotes/Profits from Prostitution of a Person under 16 years

SEX OFFENDER TIER I ASSESSMENT

Any sex offender not otherwise designated to Assessment Tier II or III:

- a. DE110764 Indecent Exposure Second Degree – If Second Conviction within 5 yrs
- DE110765 Indecent Exposure First Degree
- DE110766 Incest
- DE110767 Unlawful Sexual Contact Third Degree
- DE110780 Female Genital Mutilation
- DE111100 Dealing in Children
- DE111112 Sexual Offender who Resides or Loiters within 500 feet of school
- DE111335(a)(6) or (7) Violation of Privacy

Conviction for a second Tier 3 or Tier 2 offense will be designated Tier 3.

Conviction for a subsequent Tier 1 offense occurs within 5 years of previous conviction, sex offender will be placed in Tier 2 when convicted again.

Also all sex offenders will be raised to Level Tier 3 once they are wanted persons. They will also be reduced back to their original Tier Level Assessment once the Warrant/Capias has been cleared.

- The entire Sex Offender Training Manual can be found at:

<http://server.deljis.state.de.us>

Click on the Training heading and scroll down to the DELJIS Sex Offender Training Manual

POLICY STATEMENT – BAIL

Recognizing that the setting of bail is an important and delicate exercise of judicial discretion, but that such discretion is restrained by both constitutional and statutory limitations, SENTAC has adopted a “totality of the circumstances test” as bail policy to assist Delaware judicial officers in making logical, appropriate bail setting decisions. This policy has been adopted for the following reasons:

- Presumptive bail under Delaware law is to release upon a defendant’s own recognizance or upon an unsecured appearance bond.
- Delaware law requires judicial officers to consider **all** legally relevant circumstances and criteria in reaching a bail decision.
- Departure from presumptive release upon OR or unsecured bail is permissible **only** if a totality of the circumstances analysis determines that secured bail is necessary to (a) ensure the defendant’s appearance to answer charges and/or (b) to ensure the safety of any victims or witnesses or the community.
- In considering and weighing legally relevant factors, the judicial officer must balance the rights of the defendant:
 - to be presumed innocent,
 - to be at liberty while awaiting trial,
 - to develop a defense,
 - to provide financial and other support for family, and
 - to preclude pressure to resolve the case to escape confinement with the State’s interests:
 - to ensure the defendant appears to answer to criminal charges,
 - to protect victims, witnesses, and the community, and
 - to ensure the proper administration of justice.
- A totality of the circumstances analysis requires a judicial officer to focus on **all** the factors legally relevant to a bail decision, not on a single factor, such as nature of the charged offense.
- A totality of the circumstances analysis requires and permits a judicial officer to make, “...a balanced assessment of the relative weights” of all the various factors legally relevant to a bail decision.²⁵
- A totality of the circumstances analysis gives a judicial officer broad, comprehensive discretion to fit bail to each case as the factors of each case warrant.

²⁵ *Illinois v. Gates*, 462 U.S. 213, 234 (1983).

THE BAIL DECISION – APPROPRIATE STEPS

1. REVIEW

Review the charging document and/or case file; criminal, traffic, capias and/or payment history information relating to the defendant and the offense; the Recommended Monetary Ranges; and any Special Case Procedures.

2. RECORD INITIAL FINDINGS

- a. Record applicable aggravating and/or mitigating factors.
- b. Review the list of bail conditions that may be imposed.
- c. Determine the flight and/or safety risks involved, using a totality of the circumstances approach.
- d. Determine whether imposition of bail conditions may reduce risk, and to what extent.
- e. Record findings.

Risk of Flight: Will defendant appear as directed? If uncertain, or if it is apparent the defendant will not appear, are there any bail conditions that will abate the risk?

Safety of the Victim and/or Community: Does the defendant present a danger to any victim(s) and/or the community? If uncertain, or if it is apparent the defendant will endanger the safety of the victim and/or the community, are there any bail conditions that will abate the risk?

3. WEIGH AND ANALYZE FOR FINAL DECISION

- a. Consider and weigh all applicable factors, the conclusions reached regarding flight risk and safety risk, and possible bail conditions that may abate any risk. Using a totality-of-the-circumstances approach, determine the bail type.
- b. Using the same approach, determine bail amount for each charge. Also consider that the total bail amount for the entire case should be reasonable under all the circumstances; and that bail amount for each charge should be within the Recommended Monetary Range for the offense classification **unless** exceptional, articulable factors exist. If the bail amount is outside the Range, record additional justification.

4. SELECT AND RECORD BAIL CONDITIONS

- a. Bail conditions should be reasonably related to the instant offense or the underlying circumstances of the offense.
- b. May be used as an alternative to secured bail, where appropriate.
- c. Record all conditions.

THE BAIL DECISION – BASIC CONSIDERATIONS

- **PRESUMPTION:** Judges are required to release defendants on their own recognizance **OR** on unsecured bail **unless** factors to the contrary (“aggravating factors”) exist.
 - **Exception:** Capital crimes. 11 *Del. C.* §§ 2101 and 2105(a).²⁶
- **BAIL TYPE:** Shall be based on a totality-of-the-circumstances analysis of all mitigating and aggravating factors.
 - **Bail type** should not be based solely on the nature of the charge(s).
 - **Secured Bail** may be considered reasonable only if aggravating factors exist. Establish and record all applicable factors.
 - **Cash Bail** is a more restrictive type of secured bail. Therefore, cash bail should be used sparingly, reserved for extraordinary circumstances, the presence of which must be recorded.
 - **Mixed Bail Types:** Avoid setting secured and unsecured/OR bail on the same case. Bail for non-incarcerable offenses may be set at \$1 secured each **IF** the overall case **bail type** is secured.
- **BAIL AMOUNT:** Shall be based on a totality-of-the-circumstances (TOTC) analysis of all aggravating and mitigating factors.
 - The accompanying monetary ranges are recommendations for bail amount based on the **nature** of the offense as indicated by the *Delaware Code* offense classification. “Nature of offense” is only one of many relevant bail factors and shall not be the sole basis for the bail decision. Use these ranges in conjunction with other relevant bail factors.
 - The vast majority of bail decisions should fall within the recommended monetary ranges. Reasons for departing from the ranges must be documented.
 - Bail **amounts** shall be set *by charge* pursuant to SENTAC policy.

²⁶ At publication (06-30-2010), only Murder in the First Degree, 11 *Del. C.* § 636, is a capital offense in Delaware.

RECOMMENDED MONETARY RANGES

Offense Class	Bail Guideline	Penalty-Custody	Penalty-Fine	Notes
FELONIES				
Murder 1 11 <i>Del. C.</i> § 636	Hold Without Bail* (11 <i>Del. C.</i> § 2103)	Death or Natural Life	no cap	Capital Offense Non-Bailable
Felony Class A	\$20,000 to \$100,000	M/M 15 years to Life	no cap	
Felony Class B	\$10,000 to \$60,000	M/M 2 to 25 years	no cap	
Felony Class C	\$2,000 to \$20,000	0-15 years	no cap	
Felony Class D	\$1,000 to \$10,000	0-8 years	no cap	
Felony Class E	\$500 to \$6,000	0-5 years	no cap	
Felony Class F	\$250 to \$3,000	0-3 years	no cap	
Felony Class G	\$250 to \$2,000	0-2 years	no cap	
MISDEMEANORS and VIOLATIONS				
Misdemeanor Class A	OR to \$1,000	0-1 year	0-\$2300	
Misdemeanor Class B	OR to \$200	0-6 months	0-\$1150	
Misdemeanor (unclassified)	OR to \$100	0-30 days	0-\$575	
Violation – 1 st	OR to \$50	0-1 year probation LI	0-\$345	Subsequent violations are within a 5-year period.
Violation – 2 nd	OR to \$100	0-1 year probation LI	0-\$690	
Violation – 3 rd	OR to \$200	0-1 year probation LI	0-\$1150	

See special case procedures and considerations for issues related to special case types.

*Only Murder 1 under 11 *Del. C.* § 636(a)(1) through (6) is a capital offense as of this writing (June 2010). See “No Bail – No Jail” section of this Benchbook. Murder 1 does not include Attempted Murder.

Special Case Procedures & Considerations

The following represents a concise, but not comprehensive, outline of circumstances and case types requiring consideration of factors that may not have been appropriate to consider at the time the case bail was set initially, or factors that, due to the nature of the case, may require exceptionally close examination.

Capiases/Warrants & Rule 9 Warrants

- Failure to Appear: Original case bail; bail recommendation of issuing court; known practices of issuing court (for instance, Superior Court FTA Trial Capias may contain a high cash bail recommendation based on that Court's rigorous trial-setting practices and notice to defendants); FTA capias history; history of escape or resisting arrest convictions.
- Failure to Pay: Amount owed; history of FTP capias on the case; whether Work Referral or Wage Assignment has been ordered but not defendant failed to follow order; history of FTP capias on all cases; amounts owed to all courts at time of arrest on FTP capias.
- Rule 9 Warrants: Treat similar to new charges with bail set for first time, absent any recommendation from Superior Court.

Domestic Violence - PFA Violations

- Intimate Partners: (Husband/Wife; Ex-Spouses; Boyfriend/Girlfriend and ex; Same-sex relationships) – Use DV Lethality Screening Tool to assess risk – Do not underestimate results; recent separation of parties increases risk dramatically—loss of control may trigger violence.
- Other Family Members: Threats of violence or suicide; prior incidents of violence and escalating violence; sexual assault; whether instant offense involves injury; access to weapons; substance abuse; mental health issues; employment issues.
- PFA Violations: History of violations and violation of no contact orders (breach of release).

Drugs

- Offense occurred in Protected Area or in an area used as a Base of Operations
- Force or high-speed flight via motor vehicle was used to escape apprehension
- History includes prior Title 16 convictions and/or violent offenses
- Instant Offense carries mandatory penalty and/or quantity of drug indicates serious drug dealing;
- Minors are involved in offense as accomplices or as targeted customer; or offense involves death or injury to user/customer

Fugitives

- Nature of offense alleged to have been committed in foreign jurisdiction & bail guideline for comparable Delaware offense
- Circumstances of defendant's apprehension

Motor Vehicle & DUI

- DUI: Classification of offense as felony or misdemeanor – based on defendant’s conviction history; alleged BAC at time of offense; circumstances of defendant’s apprehension (accident, risky driving, injury or death to others, property damage); history of defendant’s compliance with substance abuse treatment and/or rehabilitation previously ordered by court; indications of long-term substance abuse – Use mandatory bail condition if required [11 *Del. C.* § 2108(c)].
- Motor Vehicle: Imperative to remember that secured bail may not be ordered as initial bail for non-jailable offenses. A driver’s license may be used as a form of secured bail provided defendant is given a receipt.

Sexual Offenses

- Child Victim: Require that the defendant have no contact with children except upon good cause shown and as provided by the Court [mandatory bail condition as required by 11 *Del. C.* § 2108(b)].
- Registered Sex Offenders: Require the defendant to register if defendant is charged with failing to register as a sex offender [mandatory bail condition as required by 11 *Del. C.* § 4120(4)].

Truancy

Adult Offender:

- Original Truancy charge: Truancy charges are criminal offenses if adult offender and may be treated as such for bail purposes.
- FTA Capias/FTP Capias/Contempt of Court: Set unsecured or secured based on circumstances

Juvenile Offender:

- Original Truancy charge: Truancy charges are civil offenses if juvenile offender; all restrictions on incarcerating juveniles pursuant to 10 *Del. C.* § 1007 apply to such cases.
- FTA Capias: Secured bail may only be set if the conditions imposed by 10 *Del. C.* § 1007 are met.
- FTP Capias: A capias may not be issued for a juvenile for FTP. Such a capias may be issued for the juvenile’s parent or other responsible who co-signed any payment agreement. Thus, if presented with a FTP capias issued on a juvenile, set unsecured bail.
- Contempt of Court: If based on the underlying truancy matter, bail may be secured or unsecured depending on the circumstances and only if the conditions imposed by 10 *Del. C.* § 1007 are met.

Violation of Probation – Contempt of Court – Breach of Release

- If returned to other than issuing court, give great deference to recommendation of issuing court.
- VOP: Consider any facts available showing VOP is substantive or for collection of monies owed only. Consult probation officer if available. Review underlying offense and original sentence imposed. Consider prior VOPs on same or other cases.
- COC (often issued for FTP matters): Consider amount of monies owed, defendant financial resources, age of case, payments made to date if any, and history of prior FTP capiases on instant case and other cases.
- Breach of Release: Consider type of breach involved – breach of no-contact order, and nature of alleged unlawful contact are generally the most serious, although bail conditions can be breached in other ways than violation of a no-contact order.